Supreme Court, U.S.
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86-943

IN THE

Supreme Court of The United States

OCTOBER TERM, 1986

No. _____

AMERADA HESS CORPORATION, AMOCO PRODUCTION COMPANY, APACHE CORPORATION, ATLANTIC RICHFIELD COMPANY, CITIES SERVICE OIL AND GAS CORPORATION, DEVON ENERGY CORPORATION, EXXON CORPORATION, INEXCO OIL COMPANY, KIRBY EXPLORATION COMPANY, MARATHON OIL COMPANY, MERIDIAN OIL PRODUCTION, INC., MUSTANG PRODUCTION COMPANY, SAMEDAN OIL COMPANY, SUN EXPLORATION AND PRODUCTION COMPANY, and TENNECO OIL COMPANY,

Appellants,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF OKLAHOMA

JURISDICTIONAL STATEMENT

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December, 1986

QUESTIONS PRESENTED

1. Whether in light of the Court's recent decision in *Transcontinental Gas Pipeline Corp. v. State Oil and Gas Board Mississippi,* 106 S.Ct. 709 (1986) ("*Transco*"), a recently enacted Oklahoma statute (H.B. 1221) requiring producers marketing natural gas from a well to share their market with other owners in the same well, conflicts with Congress' determination that the supply, demand, and price of deregulated gas be determined exclusively by market forces.

2. Whether H.B. 1221 violates the due process clause U.S. CONST. amend. XIV, § 2 by requiring the transfer of money from one private citizen to another with no connection to the public interest in conservation of natural resources.

3. Whether H.B. 1221 as applied to contracts for the sale of gas entered into before the effective date of the statute impermissibly impairs the obligation of contracts in violation of U.S. CONST. art. I, § 10, cl. 1.

PARTIES BELOW

A list of all parties to the proceeding below is as follows: Dennis E. Seal, Darlene C. Seal, Donald D. Seal, Pamela Upchurch, Sueellen Farris, Farmers United Cooperative Pool, Western Oklahoma Royalty Association, J. Cooper West, Neva L. Harris, Hugh Howard Walsh III, A. R. Heiman, Shelby Snider Corporation, R. C. Bradley, Trustee for the R. C. Bradley Revocable Trusts, F. M. Tarpley, Trustee for the F. M. Tarpley Revocable Trusts, Gordon R. Brechiesen, A. E. Martin, Amory Corporation, George Gallesty, Gallesty Oil Properties, Inc., Fuller Petroleum, Inc., Carl A. Neilson, Elsie M. Elder, Nancy DeLong Machino, G. M. Tapp and Albert B. Tapp, Hamp Baker, Norma Eagleton, James B. Townsend, Amerada Hess Corporation, Amoco Production Company,

Apache Corporation, Atlantic Richfield Company, Cities Service Oil and Gas Corporation, Devon Energy Corporation, Energy Reserves Group, Inc., El Paso Exploration Company, Exxon Corporation, Getty Oil Company, Grace Petroleum Corporation, Gulf Oil Corporation, Inexco Oil Company, Kerr-McGee Corporation, Kirby Exploration Company, Mapco Production Company, Marathon Oil Company, Monsanto Oil Company, Mustang Production Company, Phillips Petroleum Company, Samedan Oil Corporation, Santa Fe Energy Company, Shell Western E & P Inc., Sun Exploration and Production Company, Tenneco Oil Company, and Texaco, Inc. A list of parents, subsidiaries and affiliates of the corporate parties to this appeal is contained in Appendix G.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties Below	i
Introduction	1
Opinion Below	2
Statement of Jurisdiction	2
Statutes Involved	2
Statement of the Case	3
How the Federal Questions were Presented	3
The Questions are Substantial	4
I. H. B. 1221 DIRECTLY UNDERMINES CONGRESS' DETERMINATION THAT THE PRICE, SUPPLY, AND DEMAND OF DEREGULATED NATURAL GAS BE DETERMINED BY MARKET FORCES	4
II. H. B. 1221 IS VOID UNDER THE DUE PROCESS CLAUSE BECAUSE IT TRANSFERS PROPERTY OF ONE PERSON TO ANOTHER PERSON WITHOUT A JUSTIFYING PUBLIC PURPOSE	9
III. H. B. 1221 APPLIED TO CONTRACTS ENTERED INTO BEFORE ENACTMENT IS VOID UNDER THE CONTRACT CLAUSE BECAUSE THE ACT IS A SUBSTANTIAL IMPAIRMENT, INTERFERES WITH LEGITIMATE EXPECTATIONS, AND BENEFITS ONLY A NARROW CLASS RATHER THAN A BROAD SOCIAL INTEREST	11
CONCLUSION	14

TABLE OF AUTHORITIES

Constitution

	Page
U.S. CONST. art. I, § 10, cl. 1	i, 13
U.S. CONST. art. VI, cl. 2	8
U.S. CONST. amend. XIV, § 2	i, 9

Statutes

15 U.S.C.A. § 717(b) (West 1976)	7
15 U.S.C. §§ 3301-3432 (Supp. V 1981)	4, 5, 9
28 U.S.C.A. § 1257(2) (West 1966)	2, 4
52 Okla. Stat. § 540 (West Supp. 1986-1987)	
52 Okla. Stat. §§ 541-547 (West Supp. 1986-1987)	*passim*

Cases

Allied Structural Steel Co. v. Spannaus, 438 U.S. 234 (1978)	11
Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400 (1983)	12, 13
Exxon Corp. v. Eagerton, 462 U.S. 176 (1983)	12
Home Building & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934)	13
Missouri Pac. R. Co. v. Nebraska, ex. rel. Bd. of Transp., 164 U.S. 403 (1896)	10
Northern Natural Gas Co. v. State Corporation Commission of the State of Kansas, 372 U.S. 84 (1963)	7, 8, 9
Northwest Central Pipeline Corp. v. State Corporation Commission, 699 P.2d 1002 (Kan. 1985), remanded 106 S.Ct. 1169 (1986)	8, 13
Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954)	13

Page

Tenneco Oil Co. v. El Paso Natural Gas Co., 687 P.2d 1049 (Okla. 1984) 10

Thompson v. Consolidated Gas Utilities Corp., 300 U.S. 55 (1937) 9, 10

Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Mississippi, 106 S.Ct. 709, (1986) ... *passim*

United Petroleum Exploration, Inc. v. Premier Resources, Ltd., 511 F.Supp. 127 (W.D. Okla. 1980) 10

United States Trust Co. v. New Jersey, 431 U.S. 1 (1977) 13

Veix v. Sixth Ward Building & Loan Assn., 310 U.S. 32 (1940) 12

Miscellaneous

1 E. Kuntz, *Law of Oil & Gas*, § 4.3 (1961) 11

1 W. Summers, *Oil & Gas*, § 63 (1961) 11

1 H. Williams and C. Meyers, *Oil and Gas Law*, § 204.6 (1985) 11

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No. _____

AMERADA HESS CORPORATION, AMOCO PRODUCTION COMPANY, APACHE CORPORATION, ATLANTIC RICHFIELD COMPANY, CITIES SERVICE OIL AND GAS CORPORATION, DEVON ENERGY CORPORATION, EXXON CORPORATION, INEXCO OIL COMPANY, KIRBY EXPLORATION COMPANY, MARATHON OIL COMPANY, MERIDIAN OIL PRODUCTION, INC., MUSTANG PRODUCTION COMPANY, SAMEDAN OIL COMPANY, SUN EXPLORATION AND PRODUCTION COMPANY, and TENNECO OIL COMPANY,

Appellants,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF OKLAHOMA

JURISDICTIONAL STATEMENT

Appellants indicated in the caption above (the "Amerada Hess appellants") appeal from a judgment issued by the Supreme Court of Oklahoma on June 17, 1986. This jurisdictional statement is submitted to show that this Court has jurisdiction of this appeal and that the appeal presents substantial questions of constitutionally permissible state regulation of natural gas.

OPINION BELOW

The opinion of the Oklahoma Supreme Court dated June 17, 1986, rehearing denied September 10, 1986, is reported at 725 P.2d 278 (Okla. 1986). See Appendix A below.

STATEMENT OF JURISDICTION

This action was a consolidated appeal in the Supreme Court of Oklahoma of an order of the Corporation Commission of Oklahoma issuing rules under H.B. 1221. See Appendix B. In *Amerada Hess Corp., v. Corporation Commission of the State of Oklahoma,* No. 61652 below, appellants contended that the rules were invalid *in toto* because H.B. 1221 was unconstitutional on federal and state grounds. Most of those appellants are also appellants herein. In *Seal v. Corporation Commission of the State of Oklahoma,* No. 61636 below, appellants in that case assumed the constitutionality of H.B. 1221 but asserted that certain rules did not reflect legislative intent.

The Amerada Hess appellants appeal from a decision dated June 17, 1986 of the Oklahoma Supreme Court in *Seal v. Corporation Commission of the State of Oklahoma* and *Amerada Hess Corp. v. Corporation Commission of the State of Oklahoma,* No. 61636 (consolidated). Petitions for rehearing were timely filed and were denied by the Oklahoma Supreme Court on September 10, 1986. See Appendix C. Notices of appeal were duly filed by the Amerada Hess appellants on November 26, 1986. See Appendix D. The jurisdiction of this court is invoked under 28 U.S.C.A. § 1257(2) (West 1966).

STATUTES INVOLVED

This appeal concerns the constitutionality of House Bill 1221, codified at 52 Okla. Stat. §§ 541-547 (West Supp. 1986-1987) which is reprinted in Appendix E.

STATEMENT OF THE CASE

H.B. 1221 was signed into law and became effective on May 3, 1983. The Act requires gas producers marketing natural gas from a well to share their market by sharing the proceeds of their sales with other owners in the same well who are not selling gas. The Oklahoma Corporation Commission, by Order 250466, dated December 21, 1983, issued rules to administer H.B. 1221. Separate appeals of Order 250466 were filed in the Oklahoma Supreme Court in *Seal v. Corporation Commission of the State of Oklahoma,* No. 61636, and in *Amerada Hess Corp. v. Corporation Commission of the State of Oklahoma,* No. 61652. The cases were consolidated by order of the Oklahoma Supreme Court on April 2, 1984. On June 17, 1986, the Oklahoma Supreme Court issued its opinion holding H.B. 1221 valid on state and federal constitutional grounds. With limited exceptions, the rules were also held to be valid. The appellants in both *Seal* and *Amerada* filed timely petitions for rehearing. The Oklahoma Supreme Court denied the petitions for rehearing without opinion on September 10, 1986.

HOW THE FEDERAL QUESTIONS WERE PRESENTED

The question whether H.B. 1221 conflicts with federal law was raised in the Petition in Error and for Alternative Relief (and Preliminary Statement) filed by the Amerada Hess appellants in No. 61652 below on January 19, 1984. This Court's decision in *Transco* was issued after the briefs were submitted below. The issues raised by that case were put before the Supreme Court of Oklahoma in the Petition for Rehearing of the Amerada Hess appellants filed July 28, 1986. The Oklahoma Supreme Court did not discuss the issue in its order denying rehearing. (Appendix C)

The remaining questions above, concerning whether H.B. 1221 violates the Due Process Clause and the Contract

Clause, respectively, were raised in the Amerada Hess appellants' Petition in Error and Brief in Chief. The Oklahoma Supreme Court addressed these issues and rejected Amerada's arguments in its June 17, 1986 opinion. These questions were again raised in the Amerada Hess appellants' Petition for Rehearing. The Oklahoma Supreme Court did not discuss these issues in its order denying rehearing.

The Oklahoma Supreme Court upheld the validity of the state statute, thus invoking this Court's jurisdiction under 28 U.S.C.A. § 1257(2) (West 1966).

THE QUESTIONS ARE SUBSTANTIAL

I. H.B. 1221 DIRECTLY UNDERMINES CONGRESS' DETERMINATION THAT THE PRICE, SUPPLY, AND DEMAND OF DEREGULATED NATURAL GAS BE DETERMINED BY MARKET FORCES.

This Court recently emphasized Congressional intent under the Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301, *et seq.* (Supp. V 1981) ("NGPA"), to occupy the field of deregulated natural gas to the exclusion of the states. In *Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Mississippi,* 106 S.Ct. 709 (1986), the Court struck down a Mississippi ratable take order on the ground that "Mississippi's action directly undermines Congress' determination that the supply, the demand, and the price of high-cost gas be determined by market forces." 106 S.Ct. at 716-717.

In addition to having deregulated high-cost gas, Congress has also deregulated, through Section 121 of the NGPA, 15

U.S.C. § 3331, most "new gas"[1] and intrastate gas. H.B. 1221 was effective on May 3, 1983, and therefore affects primarily new and high-cost gas.

H.B. 1221 requires producers to share their markets, thereby interfering with the operation of the free market for deregulated gas that Congress ordained in the NGPA for certain categories of natural gas. H.B. 1221 has the effect of raising the price of gas to the pipelines and thus to consumers. Natural gas producers without contracts have no incentive to accept contracts for lower prices in Oklahoma because H.B. 1221 provides the mechanism by which producers without contracts can simply demand a share of proceeds of higher priced gas sold by other producers. The ability of certain producers to demand and receive a higher price for natural gas than they would otherwise be able to receive in the market distorts the operation of the market. This distortion interferes with Congressional intent that the price of this deregulated gas be determined entirely by market forces.

Comparison of the effect of H.B. 1221 and the facts of the *Transco* case show that H.B. 1221 would have the same effect on the market as the Mississippi rule struck down in *Transco.* In *Transco,* Getty Oil Company had a long-term gas purchase contract under which Transco agreed to purchase gas that was classified as high-cost natural gas and thus deregulated as to price under § 121 of the NGPA. Initially, Transco purchased not only Getty's share of the gas but also on a "non-contract basis," gas from other working interest owners including

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[1] This gas includes all or parts of that defined in Section 102 (new gas) and Section 103 (new onshore production wells). See Appendix F. To qualify under these Sections, the gas must be produced from a "new well," which is defined in Section 2(3) of the NGPA as one "... the surface drilling of which was begun on or after February 19, 1977...." 15 U.S.C. § 3301(3).

Coastal Exploration, Inc. In 1982, when demand for gas dropped, Transco advised that it would no longer purchase gas from owners with whom it did not have contracts. Transco refused Coastal's request that Coastal be permitted to ratify the Transco-Getty contract. Transco, however, offered to purchase Coastal's gas at a lower price. Coastal refused Transco's offer. Getty then cut back production so that the wells produced only the amount of gas equal to Getty's ownership interest in the maximum flow.

Coastal responded by applying to the State Oil and Gas Board of Mississippi for an order commanding Transco to take ratably from the gas pool in accordance with the Board's statewide Rule No. 48. The Board entered an order requiring Transco to take ratably from the pool. The Board's order, affirmed by the state courts in Mississippi, was held invalid by this Court.

If Mississippi had had the equivalent of H.B. 1221, Coastal would not have invoked state-wide Rule No. 48. Rather than seeking a Rule No. 48 order, Coastal could have simply demanded a share of Getty's revenue under the provisions of H.B. 1221. In fact, with the Mississippi equivalent of H.B. 1221, Coastal would have been better off than under a ratable take order, and the market pricing mechanism would suffer even more distortion. As this Court noted in *Transco,* under the holding of the Mississippi Supreme Court, Transco would only have to pay Coastal the current market price rather than the price it was paying Getty under the Getty-Transco contract. 106 S.Ct. at 714 n.2. Under H.B. 1221, Coastal would have received a higher price than the current market price. Thus, the Oklahoma statute tries to do under a different mechanism exactly what this Court has forbidden Mississippi to do. The Oklahoma statute regulates price because it permits producers

to receive a higher price than they would in the absence of the statute.

The *Transco* decision also affirmed this Court's earlier decision in *Northern Natural Gas Co. v. State Corporation Commission of the State of Kansas,* 372 U.S. 84 (1963), concerning the limitations on state activities that directly or indirectly affect sales of gas. These limitations apply even if the state attempts to justify its actions on the basis of protection of correlative rights. The Court in *Northern Natural* rejected Kansas' claim that the statute was justified as protecting correlative rights, and the state claim that the Kansas act was limited to production and gathering, which are exempt from coverage under the Natural Gas Act, 15 U.S.C.A. § 717(b) (West 1976). Instead, the Court pointed out that ". . . 'production' and 'gathering' are terms narrowly confined to the physical acts of drawing gas from the earth and preparing it for the first stages of distribution." 372 U.S. at 90. H.B. 1221 has nothing to do with the physical act of drawing the gas from the earth and preparing it for the first stages of distribution. It affects sales and ultimately sales price.

Furthermore, H.B. 1221 may require a readjustment of purchasing patterns, which is impermissible under *Northern Natural* because such changes may impair federal authority over the "intricate relationship" between purchasers' cost structure and final costs to consumers. 372 U.S. at 92. Under H.B. 1221, purchasers seeking new supplies of gas will not be able to enter into contracts with non-contracted owners in wells where another owner is selling gas at a price higher than the current market price. The non-contracted parties will simply share in proceeds of the higher priced contract rather than enter into a new contract. Instead, purchasers will be forced to offer a higher price than the existing contract on the well, buy from other wells that may not be the first choice for

supply, or seek contracts in states that do not have market-impairment legislation.

It is also important to emphasize that *Northern Natural* prohibits state action *indirectly* affecting sales. "The federal regulatory scheme leaves no room either for direct state regulation of the price of interstate wholesalers of natural gas or for state regulations which would indirectly achieve the same result." 372 U.S. at 91 (citation omitted). Thus it is no defense that the main impact of H.B. 1221 is on producers rather than pipelines. That defense, adopted by the Kansas Supreme Court in *Northwest Central Pipeline Corp. v. State Corporation Commission,* 699 P.2d 1002, 1017 (Kan. 1985), upholding a change in Kansas proration field rules, has been implicitly rejected by this Court in its remand of the *Northwest Central* case to the Kansas Supreme Court for reconsideration in light of *Transco. Northwest Central Pipeline Corp. v. Corporation Commission of Kansas,* 106 S.Ct. 1169 (1986).

The *Northern Natural* Court also found the Kansas ratable take statute objectionable because it put burdens on interstate pipelines to carry out the complex task of balancing the output of thousands of natural gas wells. 372 U.S. at 92. Under H.B. 1221, the burden on pipelines is to pay and account to thousands of non-contracted parties pursuant to provisions of 52 Okla. Stat. § 540 (West Supp. 1986-1987) whose terms are incorporated in § 545 of H.B. 1221. Under § 540, the purchaser is primarily liable for such payments and accounting.

In summary, H.B. 1221 violates the Supremacy Clause of the United States Constitution, art. VI, cl. 2, because H.B. 1221 is an attempt by a state to regulate the supply, demand, and price of categories of gas Congress has determined should be deregulated. *Transco, supra.* Those categories of natural gas deregulated in § 121 of the NGPA are all or parts of § 102, § 103, § 106(b) and § 107 gas.

H.B. 1221 also violates the Supremacy Clause as to all gas sold in interstate commerce, whether or not deregulated, by interfering with the "intricate relationship" between purchasers' and consumers' costs. *Northern Natural, supra.*

Finally, H.B. 1221 violates the Commerce clause as to all gas sold in interstate commerce whether deregulated or not by placing a burden on interstate commerce. *Northern Natural, supra.*

II. H.B. 1221 IS VOID UNDER THE DUE PROCESS CLAUSE BECAUSE IT TRANSFERS PROPERTY OF ONE PERSON TO ANOTHER PERSON WITHOUT A JUSTIFYING PUBLIC PURPOSE.

The salient question is whether H.B. 1221, in taking property from the appellants for the benefit of a subclass of private persons, does so without a justifying public purpose, thus violating the due process requirements of the Fourteenth Amendment. U.S. CONST. amend. XIV, § 2; *Thompson v. Consolidated Gas Utilities Corp.,* 300 U.S. 55, 80 (1937).

The answer is apparent. As the dissent below concludes "... [H.B. 1221] simply rearranges the contractual obligations of private individuals for the benefit of a subclass of well owners not having a contract to sell their product." Appendix A-43.

H.B. 1221 favors one narrow class of persons over another. It takes from a working interest owner in a gas well a part of the money which he receives from his purchaser for his sales of gas from the well under his gas sales contract, and gives it to those working interest owners in the well who have no contract for their sole benefit.

In the words of Mr. Justice Brandeis in a case closely analogous on its facts to the instant case: "Our law reports

present no more glaring instance of the taking of one man's property and giving it to another." *Thompson v. Consolidated Gas Utilities Corp.,* 300 U.S. at 79-80. Moreover, Mr. Justice Brandeis continued, ". . . this Court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose . . . ." 300 U.S. at 80. As the facts and holding of the *Thompson* case establish, compelling a producer to share his gas market with another producer who lacks a market — which is precisely what H.B. 1221 requires — is not a "justifying public purpose." *See also, Missouri Pac. R. Co. v. Nebraska, ex. rel. Bd. of Transp.,* 164 U.S. 403 (1896).

The court below attempted to create a justifying public purpose for the transfer of property from one private party to another by redefining "correlative rights." All of the authorities (including the Oklahoma Supreme Court itself in prior opinions) and all of the commentators have defined "correlative rights" as having reference to the rights and duties of owners of mineral interests in a common source of supply of hydrocarbons. In *Tenneco Oil Co. v. El Paso Natural Gas Co.,* 687 P.2d 1049 (Okla. 1984), the Oklahoma Supreme Court adopted the definition from *United Petroleum Exploration, Inc. v. Premier Resources, Ltd.,* 511 F.Supp. 127 (W.D. Okla. 1980), that:

> . . . correlative rights are those rights which one owner possesses in a common source of supply in relation to those rights possessed by other owners in the same common source of supply [which is] the underlying geological strata from which the oil and gas is produced, rather than the well through which the oil and gas is reduced to possession.

687 P.2d at 1053 n.11. The concept of correlative rights does not refer to the relationship among owners in a single well.[2]

Moreover, those rights and duties are inextricably associated with promoting sound conservation practices. The revenue sharing requirement of H.B. 1221, however, has nothing whatever to do with the mutual rights and duties of owners of interests in properties underlain by a common source of supply and has nothing whatever to do with conservation of natural resources. H.B. 1221 has to do with the transfer of money. There is no correlative right in money. H.B. 1221 cannot be bootstrapped into a constitutionally acceptable status by redefinition.

III. H.B. 1221 APPLIED TO CONTRACTS ENTERED INTO BEFORE ENACTMENT IS VOID UNDER THE CONTRACT CLAUSE BECAUSE THE ACT IS A SUBSTANTIAL IMPAIRMENT, INTERFERES WITH LEGITIMATE EXPECTATIONS, AND BENEFITS ONLY A NARROW CLASS RATHER THAN A BROAD SOCIAL INTEREST.

In *Allied Structural Steel Co. v. Spannaus,* 438 U.S. 234 (1978), the Court listed the criteria for judging a federal contract clause challenge to a state legislative enactment: (i) whether the legislation operates as a substantial impairment of a contractual relationship, and (ii) whether the law was enacted to meet an important general social problem, i.e., to

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[2] *See also Transco* in which the Court stated: "Thus, one well can drain an entire pool, even if the gas in the pool is owned by several different owners. The interests of these other owners often are referred to as 'correlative rights'." 106 S.Ct. at 711. *See also,* 1 E. Kuntz, *Law of Oil & Gas,* § 4.3 *et seq.* (1962); 1 H. Williams & C. Meyers, *Oil and Gas Law,* § 204.6 (1983); W. Summers, *Oil and Gas,* § 63 (1961);

protect a broad societal interest rather than a narrow class. In determining whether there is a substantial impairment, the Court considers whether the legislation interferes with a person's legitimate contractual expectations. Subsequent decisions have applied the criteria to different circumstances but have not changed the test. *Energy Reserves Group, Inc. v. Kansas Power and Light Co.,* 459 U.S. 400 (1983); *Exxon Corp. v. Eagerton,* 462 U.S. 176 (1983).

The Oklahoma Supreme Court held H.B. 1221 did not interfere with a person's legitimate contractual expectations, because: "The State of Oklahoma like the State of Kansas in *Energy Reserves Group, Inc.,* has extensively and continuously regulated the natural gas industry." Appendix A-26.

On rehearing, the Amerada Hess appellants argued that a producer had a legitimate expectation that its contract be free from regulation under this Court's decision in *Transco.* In *Transco,* the Court pointed out that "[t]he NGPA, therefore, does not constitute a federal retreat from a comprehensive gas policy." 106 S.Ct. at 716. Rather, "[t]he new federal role is to 'oversee a national market price regulatory scheme.' " *Id.* In the light of *Transco,* a producer may certainly have a legitimate contractual expectation that the right to enjoy the fruits of his contracts will not be interfered with by state regulation.

Moreover, the "heavily regulated industry" consideration is subordinate in Contract Clause challenges. It stems from *Veix v. Sixth Ward Building & Loan Assn.,* 310 U.S. 32 (1940), in which the Court gave some weight to the fact that the petitioner had ". . . purchased into an enterprise already regulated *in the particular to which it now objects."* 310 U.S. at 38 (emphasis added). Whether producers of natural gas have been heavily regulated at the state level in the context in which this Court has used the term in considering Contract Clause challenges is open to question. What is beyond questioning is

that producers have not been regulated at all "in the particular to which [they] now object." *Energy Reserves* involved direct price regulation which had been pervasive since this Court's decision in *Phillips Petroleum Co. v. Wisconsin,* 347 U.S. 672 (1954). The instant case involves market sharing regulation which has never been done before, and which was specifically struck down in *Thompson, supra.*

Finally, H.B. 1221 cannot reasonably be viewed as protecting a broad social interest rather than a narrow class. Simply to compare the breadth of the segment of society that the legislation in *Home Building & Loan Ass'n v. Blaisdell,* 290 U.S. 398 (1934) (home mortgagors) or *Energy Reserves, supra,* and *Exxon, supra,* (ratepayers) was enacted to protect, with the narrow class of persons (working interest owners in gas wells with no contracts) for whose benefit H.B. 1221 was enacted, belies the argument that H.B. 1221 protects a broad societal interest. There is no societal interest in transferring money from one working interest owner to another. Even under the broad scope of the police power, statutes intended to regulate existing contractual relationships must serve a legitimate purpose, *United States Trust Co. v. New Jersey,* 431 U.S. 1, 22 (1977). H.B. 1221's purpose, transferring money, does not meet this test.

Therefore, the Court should hold that H.B. 1221 violates U.S. CONST. art. I, § 10, cl.1 when H.B. 1221 is applied to revenues derived from contracts entered into before the date of enactment.

In addition to the foregoing reasons, this Court should note probable jurisdiction because the issues in this case are of importance to the natural gas producing and consuming states and to other pending litigation. The case of *Northwest Central Pipeline Corp. v. State Corp. Commission, supra,* now pending

in the Kansas Supreme Court, illustrates the problem producing states have in adjusting state interests in conservation and regulation of natural resources. One issue in that case is the validity of changes in proration rules for a large natural gas field in light of the *Transco* decision, *supra*. In the present case, a central issue is whether in the light of *Transco* states may impose market sharing regulations on gas that is deregulated or exclusively regulated by the federal government. The answer as formulated by the Court will define the limits of producing state regulation and thus influence prices for all consuming states.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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December, 1986

APPENDICES

APPENDIX A	— Opinion of the Supreme Court of the State of Oklahoma
APPENDIX B	— Order of the Corporation Commission of the State of Oklahoma
APPENDIX C	— Order denying rehearing
APPENDIX D	— Notice of Appeal
APPENDIX E	— House Bill 1221 codified at 52 Okla. Stat. §§ 541-547
APPENDIX F	— Section 121 of the Natural Gas Policy Act of 1978, 15 U.S.C. § 3331.
APPENDIX G	— List of parents, subsidiaries and affiliates of the corporate parties.

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

DENNIS E. SEAL, DARLENE C. SEAL, DONALD D. SEAL, PAMELA UPCHURCH, SUEELLEN FARRIS, FARMERS UNITED COOPERATIVE POOL, WESTERN OKLAHOMA ROYALTY ASSOCIATION, J. COOPER WEST, NEVA L. HARRIS, HUGH HOWARD WALSH III, A. R. HEIMAN, SHELBY SNIDER CORPORATION, R. C. BRADLEY, Trustee for the R. C. BRADLEY REVOCABLE TRUSTS, F. M. TARPLEY, Trustee for the F. M. TARPLEY REVOCABLE TRUSTS, GORDON R. BRECHIESEN, A. E. MARTIN, AMORY CORPORATION, GEORGE GALLESTY, GALLESTY OIL PROPERTIES, INC., FULLER PETROLEUM, INC., CARL A. NEILSON, ELSIE M. ELDER, NANCY DELONG MACHINO, G. M. TAPP and ALBERT B. TAPP,

Appellants,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,

Appellee.

No. 61,636
(Surviving number)

Consolidated with
No. 61,652

AMERADA HESS CORPORATION, AMOCO PRODUCTION COMPANY, APACHE CORPORATION, ATLANTIC RICHFIELD COMPANY, CITIES SERVICE OIL AND GAS CORPORATION, DEVON ENERGY CORPORATION, ENERGY RESERVES GROUP, INC., EL PASO EXPLORATION COMPANY, EXXON CORPORATION, GETTY OIL COMPANY, GRACE PETROLEUM CORPORATION, GULF OIL CORPORATION, INEXCO OIL COMPANY, KERR-MCGEE CORPORATION, KIRBY EXPLORATION COMPANY, MAPCO PRODUCTION COMPANY, MARATHON OIL COMPANY, MONSANTO OIL COMPANY, MUSTANG PRODUCTION COMPANY, PHILLIPS PETROLEUM COMPANY, SAMEDAN OIL CORPORATION, SANTA FE ENERGY COMPANY, SHELL WESTERN E & P INC., SUN EXPLORATION AND PRODUCTION COMPANY, TENNECO OIL COMPANY, AND TEXACO INC.,

Appellants,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA COMPOSED OF THE HONORABLE HAMP BAKER, CHAIRMAN; THE HONORABLE NORMA EAGLETON, VICE CHAIRMAN; AND THE HONORABLE JAMES B. TOWNSEND, COMMISSIONER,

Appellees.

No. 61,652

June 17, 1986.
As Amended Sept. 9, 1986.
Rehearing Denied Sept. 10, 1986

APPEAL FROM THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

In this consolidated appeal, appellants seek review of Rules promulgated by the Corporation Commission pursuant to Order No. 250466 to enforce and administer the provisions of 52 O.S. Supp. 1983 § 541, et seq. relating to sharing ratably in revenues from the sale of production of natural gas. Amerada challenges both the constitutionality of the Act and the Rules thereunder. Seal challenges only the constitutionality of specific provisions of the Rules.

AFFIRMED IN PART; REVERSED IN PART.

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HODGES, J.

This consolidated appeal presents to this Court issues regarding the constitutionality of 52 O.S. Supp. 1983 §§ 541-547 (Act) and the validity of Rules 6-100 through 6-113 (Rules) promulgated by the Oklahoma Corporation Commission (Commission) in Order No. 250466.

Appellants Amerada Hess Corporation, et al. (collectively Amerada) challenge the constitutionality of both the Act and the Rules. The major thrust of Amerada's arguments is twofold: (1) the Act and Rules are not a valid exercise of the state's police power and are thus violative of the due process provisions of the Constitutions of the United States and Oklahoma, and (2) the Act and Rules interfere with contrac-

tual rights and obligations under the federal and state constitutions.

Appellants Dennis E. Seal, et al. (collectively Seal) challenge the validity of the Rules only, maintaining they are contrary to and inconsistent with the purpose and intent of the Act and constitute a taking of property without due process of law.

The Commission asserts the Act and Rules are constitutional and are in furtherance of a legitimate public interest and are hence a proper exercise of the State's police power.

I.

STANDING

Before we discuss the merits, we must address Seal's argument concerning Amerada's standing to challenge the constitutionality of the Act. Seal contends that Amerada lacks standing because Amerada is deprived of no constitutional right as the Act requires it to do what courts of equity would require it to do in individual actions where an imbalance has occurred.

"In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues."[1] The standing doctrine encompasses several limits on the exercise of jurisdiction. At a minimum, standing is not established unless a plaintiff has "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of

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[1] *Warth v. Seldin,* 422 U.S. 490, 498, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343 (1975).

issues upon which the court so largely depends. . . ."[2] The "personal stake" element is met if the plaintiff seeking redress has suffered, or is threatened with, some "distinct and palpable injury"[3] and if there is some causal connection between the alleged injury and the actions being challenged.[4] Because we conclude Amerada alleges a direct and pecuniary injury, and it seeks to protect its proceeds of sales from the purported illegal effect of the Act and Rules thereunder, we find Amerada has standing to challenge the constitutionality of the Act and Rules.

II.

THE ACT

The public policy considerations prompting the challenged legislation were first discussed in a concurrent resolution, S.C. Resolution No. 7 entitled "Oil and Gas — Sales — Discrimination," passed by the Senate on February 22, 1983, and by the House of Representatives on March 1, 1983, and filed with the Secretary of State on March 2, 1983. The findings set forth in the resolution are as follows:

> "WHEREAS, the State of Oklahoma has the right under its police powers and conservation authority to protect the citizenry of this state from losses by reason of discrimination; and

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[2] *Baker v. Carr,* 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663 (1962).

[3] *Warth v. Seldin,* 422 U.S. 490, 501, 95 S.Ct. 2197, 2206, 45 L.Ed.2d 343 (1975); *Independent School Dist. No. 9 v. Glass,* 639 P.2d 1233 (Okla. 1982).

[4] *Simon v. Eastern Kentucky Welfare Rights Org.,* 426 U.S. 26, 41, 96 S.Ct. 1917, 1925, 48 L.Ed.2d 450 (1976).

"WHEREAS, many mineral owners and participants in oil and gas well drilling projects are being discriminated against in the sale of the production of their wells in that purchases are being made from one co-owner as against another; and

"WHEREAS, such inability of each co-owner to sell the production from a well may result in the Corporation Commission shutting-in such well to protect individual rights and correlative rights; and

"WHEREAS, when many wells are placed into production, the pro rata shares in the net revenue of many owners, including those with working interests, overriding royalties and mineral interests is not being respected and paid; and

"WHEREAS, the net effect of such predatory practices in the sale of well production will cause financial distress to the smaller co-owners; and

"WHEREAS, the inherent wealth of the great lands of Oklahoma is being divested from its rightful recipients; and

"WHEREAS, the continuance of discriminatory purchases and the dishonor of rightful pro rata shares in the production proceeds of many wells in Oklahoma will have serious effect upon the economic health of the State of Oklahoma."[5]

On May 3, 1983, Governor George Nigh signed into law Enrolled House Bill No. 1221, codified as 52 O.S. Supp. 1983 §§ 541-547. The Act which became effective immediately is expressly intended to address the protection of "the rights and correlative rights of all interest owners of natural gas wells and wells producing casinghead gas and to afford all such owners an equal opportunity to extract their fair share of gas

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[5] 1983 Okla. Sess. Laws 1172-1173.

and to sell and be paid in proportion to their interest therein." The Act is further expressly intended "to protect such owners against discrimination in purchases in favor of one owner as against another."[6]

Under Section 542, whenever a well is placed into production, all owners are entitled to share ratably in the revenues from the sale of production. Prior to the date of first production, the operator of the unit area must offer each owner of the well an election whereby the operator seeks to market that owner's ratable share of production or a designated portion thereof. In the event the owner so elects, the operator shall seek to market the owner's share at the best price and terms available in the area but not at a price or terms less favorable than those received by the operator. Each electing owner has 30 days within which to reject the offer but the owner's failure to reject is deemed an acceptance thereof. If no offer to purchase is secured within 120 days of an election the owner may rescind the election in writing. If an owner does not exercise the election, the owner is not obligated to deliver his ratable share for sale nor is the operator obligated to market such share. The Act does not prevent each owner from receiving the price agreed upon by contract and from taking his share of production in kind or separately disposing of his share.

Section 543 provides that if an electing owner receives a contract for sale of only his portion of production, the other electing owners having no contract are entitled to share ratably in the revenue from the contract "to the extent of their net revenue interest." Each electing owner receiving a contract to sell must give written notice to all other net revenue owners without a contract for the purchase of their share.

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[6] 52 O.S. Supp. 1983 § 541.

Section 544 provides that the amount of gas produced daily from a well is owned by each owner in the well in proportion to each owner's interest in the well, irrespective of which owner actually produces the gas. Each owner producing and selling or disposing of gas separately must account to the other owners not selling or otherwise disposing of gas and compensate them for their proportionate part of the gas disposed of or sold.

Section 545 provides that distribution of revenue from the sale of production be made pursuant to 52 O.S. Supp. 1985 § 540. Additionally, any owner receiving revenues directly from the purchaser must forward the same to the party responsible for distribution under Section 540.

Section 546 states that the Act shall not be construed as setting or restricting the price, terms or conditions under which a purchaser takes the production of a well; requiring any purchaser to connect any well that it is not already obligated to connect; and altering or changing the legal definitions of common purchaser and common carrier.

Section 547 empowers the Commission to promulgate rules and regulations for implementing the Act, including the power to establish and enforce penalties for violations thereof. It provides that such power does not preclude the remedies available through the district courts nor preclude any owner from recovery of treble damages and attorneys fees.

Oklahoma law has historically required ratable taking from a common source of supply.[7] In *Inexco Oil Co. v. Corporation*

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[7] 52 O.S. 1981 §§ 23-25 (enacted 1913) (creates status of common purchaser and common carrier and imposes requirement of ratable taking); 52 O.S. 1981 §§ 233-235 (enacted 1913) (requires any person taking gas from a gas field to take ratably from each owner of the gas in proportion to his interest in said gas); 52 O.S. 1981 §§ 236, 237 and 239 (enacted 1915) (directs Commission to pre-

Commission, 628 P.2d 362, 364 (Okla. 1981), this Court observed in connection with a discussion concerning ratable taking in a common source of supply under 52 O.S. 1981 §§ 23 and 24.1:

> "The basis for the enactment of Oklahoma's oil and gas conservation laws is to protect correlative rights. The purpose of the regulatory scheme concerning common carriers and common purchasers of gas is to afford the producers of a common source of supply and equal opportunity to market and transport oil and gas from their wells." (Footnotes omitted).

The Act differs with all previous legislation in that it is directed towards producers rather than purchasers and towards co-owners within a single well as opposed to owners of interests between wells in a common source of supply. Moreover, the Act entitles each owner to share ratably in the revenues generated by the sale of production and creates a type of cotenancy property interest in such proceeds.

Prior to the passage of the Act, serious problems beset the gas industry in the State of Oklahoma. In the early 1980s discriminatory practices resulted from a surplus in deliverability of natural gas. Pipelines had burdensome contractual obligations to take gas which greatly exceeded their ability to market. This circumstance caused pipelines to either ignore their contractual obligations to take under existing contracts or exercise their options to "market out." Additionally, with

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serve rules and regulations for taking of gas from common sources of supply so as to prevent waste, protect interest of public, and of all those having a right to produce therefrom, and to prevent unreasonable discrimination in favor of any one such common source of supply as against another); 52 O.S. 1981 §§ 240 and 242 (enacted 1915) (authorizes Commission to make regulations for delivery, metering and equitable purchasing and taking of gas).

regard to the acquisition of new gas reserves, they would enter into contracts with some producers and refuse to contract with other working interest owners within the same well. Non-contracting owners were generally unable to obtain a gas purchasing contract for their gas due to the surplus. Thus purchasers could take as much gas as desired from a well with only a contractual obligation to favored producers.

The industry employed the use of gas balancing contracts either contained in joint operating agreements, or otherwise, which attempted to protect rights of non-selling working interest owners by providing that their pro rata share of the gas would be balanced when the reserves were depleted. This gas balancing arrangement customarily would not afford any interest on delayed income. The non-selling owners were denied the use of these funds and moreover, there was no guaranty that the selling owners who received more than their pro rata share of proceeds would be capable, regardless of the obligation, to satisfy their liabilities after balancing of rights. All interest owners in a well would have paid their proportionate share of the drilling and completion costs of production; however, because purchasers would not take ratably from all owners, non-selling owners would not immediately receive their share in the proceeds from the well. Consequently, non-selling working interest owners would be unable to pay excess or overriding royalties to their lessees until such time as the provisions of their relevant gas balancing agreements come into effect. Under gas balancing agreements, payment of the proceeds to the non-selling owners would be deferred in many instances until the depletion of the well if the owners were unable to find a purchaser as opposed to payment as and when the production was taken from the well.

The Act addresses these kinds of abuses in the industry by providing for immediate balancing of all proceeds of produc-

tion from a single gas well from the date of first production on and after the effective date of the Act. It gives the right of ownership of interests in a gas well ratably to each co-owner in the proceeds generated by a well's production as of the moment the gas is reduced to possession consistent with the well recognized principle of the law of capture which is founded on the concept of animals *ferae naturae, i.e.,* property rights in animals are not acquired until the owner reduces them to possession by capturing them.

III.

Police Power

The threshold question before the Court, which is the common thread in Amerada's challenge to the legislation on both grounds of constitutional due process and restrictions on laws which impair the obligation of contracts is: Whether the Act constitutes a proper exercise of the police power of the State. As previously noted the expressed legislative intent is to protect the rights and correlative rights of all interest owners of wells, afford all owners an equal oppportunity to extract and sell their share of gas and protect all owners against gas purchase discrimination. The focus of Amerada's argument is that the State is limited to affecting rights only as they relate to co-owners in a common source of supply relative to separate wells as distinguished from co-owners in a single well. And, the Act by requiring one producer to share his market with other owners in a well does not operate to serve the expressed legislative intent.

It is well settled that the State may adopt reasonable regulation in the exercise of its police power to protect the

correlative rights of owners through ratable taking.[8] "Such legislation does not infringe the constitutional inhibitions against taking of property without due process of law, denial of the equal protection of the laws, or taking property without just compensation."[9] Amerada asserts the Act does not involve correlative rights urging a definition of such as those rights existing between owners of interests in a common source of supply while excluding owners of the same interests within a well, citing *United Petroleum Exploration, Inc. v. Premier Resources, Ltd.*, 511 F. Supp. 127 (W.D. Okla. 1980). In *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 687 P.2d 1049, 1053 n.11

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[8] *Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 203 Okl. 35, 220 P.2d 279, 285, *aff'd*, 340 U.S. 179, 185, 71 S.Ct. 215, 219, 95 L.Ed. 190 (1950); *Patterson v. Stanolind Oil & Gas Co.*, 182 Okl. 155, 77 P.2d 83 (1938).

It is provided in Summers, Oil and Gas § 75.3 (Perm.Ed. 1962):

"If permeability is high in the common source of supply of gas, a few operators may effectively drain much of the field. When sufficient reserves have been established to attract a pipeline into the field, the pipeline purchaser is in a position to take most of the gas from a few favored producers. Further, the law of capture makes it possible for a vertically integrated pipeline company to produce gas from its own selected properties and to drain much of the gas from the field without purchasing any gas from other owners. Either situation is conducive to waste above ground in that owners who are not favored are likely to seek or accept opportunities to market the gas for purposes which constitute a waste of valuable energy. The situation is also conducive to waste below the surface in that development wells will not be properly drilled to achieve the maximum in ultimate recovery. Ratable take and common purchaser orders have the common effect of preventing discrimination in carrying and purchasing gas, but the ultimate purpose is to prevent waste and to protect correlative rights."

[9] *Anderson-Prichard Oil Corp. v. Corporation Commission*, 205 Okl. 672, 241 P.2d 363, 372 (1951).

(Okla. 1984), a case dealing with the Commission's subject-matter jurisdiction, we accepted the refinement to our definition[10] of correlative rights by the United States District Court in *United:*

> "[C]orrelative rights are those rights which one owner possesses in a common source of supply in relation to those rights possessed by other owners in the same common source of supply [which is] the underlying geological strata from which the oil and gas is produced, rather than the well through which the oil and gas is reduced to possession."[11]

In the text of the opinion it was stated in connection with a discussion of proper subjects for private contract: "This is not to say that the rights to produce the designated quantity of hydrocarbons from *the well* and the division thereof, *the public interest,* and the owner-operator interests are not the proper subject of a private contract." 687 P.2d at 1053 (Emphasis added).

In *Samson, supra,* this definition was reiterated again in connection with the determination of the Commission's valid exercise of subject-matter jurisdiction to protect correlative rights "in situations in which a conflict exists which actually

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[10] *Kingwood Oil Co. v. Corporation Commission,* 396 P.2d 1008, 1010 (Okla. 1964):

> "The term 'correlative rights' has been defined as a convenient method of 'indicating that each owner of land in a common source of supply of oil and gas has legal privileges as against other owners of land by lawful operations conducted on his own land, limited, however, by duties to other owners not to injure the source of supply and by duties not to take an undue proportion of the oil and gas.' Summers, Oil and Gas, Vol. 1, Sec. 63."

[11] *See also Samson Resources Co. v. Corporation Com'n,* 702 P.2d 19, 22 (Okla. 1985).

affects such rights within a common source of supply and thus affects the public interest in the protection of production from that source as a whole." There, this Court found an interest owner's request to be designated as unit operator, displacing the unit well operator under a voluntary agreement, did not concern a dispute in which the public interest in correlative rights was involved. We stated the basis for the interest owner's argument did not "truly concern the disproportionate taking of gas from a common source of supply, as it has attempted to so characterize its argument."

We do not believe the newly refined definition of correlative rights adopted in our recent pronouncements regarding the Commission's subject-matter jurisdiction, inhibits the State's police power to protect correlative rights in the challenged Act.

In *United*, the federal court in addressing an interest owner's assertion that another owner/operator's over-production of gas in a well had damaged its correlative right to production, stated the alleged imbalance was "in large measure, a fiction." It noted the dispute was not whether the operator's actions in reducing to possession a quantity of gas had resulted in a hampering of the owner's ability to conduct its own operation to obtain possession of a quantity of gas from the same supply source; but rather, it revolved around whether the owner of the producing gas well could disclaim title to that portion of the production occurring while it was physically unable to take possession of its fair share, and assert instead an absolute ownership over a mathematically balanced volume of production *after* possession capability was provided. The court determined the equitable considerations required immediate cash balancing rather than a balancing in kind. Although *United* dealt with balancing the production of gas between co-owners in a single well, an infringement upon the correlative rights did not exist. The particular circumstances presented there were

the co-owner had refused an immediate cash balancing tendered by the operator in anticipation of the existence of a split stream connection in the near future. The co-owner refused the only viable method of balancing then available. Doubtless the co-owner's correlative rights were not injured. *United* is inapposite to the current controversy. Consequently, the discussion of correlative rights in that case has no bearing on the present perceived abuse in the industry as addressed in the challenged Act.

We do not read *United* to hold, as Amerada contends, that correlative rights never exist among owners of a single well. In our opinion unless all owners in a well have equal opportunity to sell gas from the well, they are not afforded the opportunity to produce their just and equitable share of the gas. The purpose of the Act is to afford this opportunity. Viewed in this light, there is no doubt that the Act protects correlative rights.

It should be noted at this point that the rule of judicial construction requires us to look to the legislative intent as manifested from all parts of the Act, being mindful that whenever reasonably possible, a statute must be so construed as to uphold its validity.[12] The Legislature may regulate a business affected with a public interest for the protection of the general welfare, and every possible presumption is to be indulged in favor of the correctness of its finding.[13] We find the purpose of the Act is a proper function of the Legislature under its police power.

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[12] *Skinner v. State,* 189 Okl. 235, 115 P.2d 123, 126 (1941).

[13] *Semke v. State ex rel. Okl. Motor Vehicle Com'n,* 465 P.2d 441, 445 (Okla. 1970).

IV.

Due Process

Amerada contends the Act denies due process of law in violation of the federal and state Constitutions.[14] Under this proposition it argues (1) the Act constitutes a taking of property for private use, (2) the Act changes accrued rights under spacing and pooling orders of the Commission and (3) the Act is unconstitutionally vague.

In connection with its first argument, Amerada asserts the Act creates an unintended third party beneficiary contract. Amerada cites 15 O.S. 1981 § 29[15] in support of this argument. We are not persuaded by this assertion. Although a purchaser may be held liable for conversion if the purchaser has notice that the non-contracting party has rescinded the operator's authority to dispose of his gas, 1 Kuntz, *Oil and Gas* § 11.2, at 242-43 (1962), the Act does not entitle a non-contracting owner to sue on another owner's contract with a purchaser. The Commission correctly maintains the benefit to the non-contracting party arises incidentally to the performance of the contract due to the rights created by the Act.

The core of Amerada's due process argument is that the Act does not serve any public purpose. Our foregoing view of this issue disposes of this argument. In *Cities Service Gas Co. v. Peerless Oil & Gas Co.,* 340 U.S. 179, 185, 71 S.Ct. 215, 219, 95 L.Ed. 190 (1950), the United States Supreme Court stated the

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[14] U.S. Const. amend. 14; Okla. Const. art. 2 § 2, 7 and 23 and art. 5 § 54.

[15] It is provided in 15 O.S. 1981 § 29:

> "A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it."

challenger's argument regarding similar ratable take provisions as to due process was "virtually without substance." The Court upheld the contested order reasoning that it is "undeniable that a state may adopt reasonable regulations to prevent economic and physical waste of natural gas." The standard applied was that such regulations be "substantially related to a legitimate end sought to be attained."[16]

In applying this standard to the present case, we find the means employed by the Act are substantially related to the legitimate end of protecting correlative rights. The measure of reasonableness of the Act enacted under the State's police power is what is fairly appropriate to its purpose and not necessarily what is best.[17]

With regard to Amerada's second argument that the Act could alter the right of individuals under existing spacing and pooling orders to receive certain proceeds on a tract allocation basis as provided by 52 O.S. 1981 § 87.1(e) (amended 1985) as interpreted by this Court in *Shell Oil Co. v. Corporation Commission*, 389 P.2d 951 (Okla. 1964) (commonly referred to as the *Blanchard* decision), we conclude the Act does not violate Article 5, § 54 of the Oklahoma Constitution.[18] The constitutional reference to an "accrued right" means a ma-

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[16] 340 U.S. at 186, 71 S.Ct. at 219 (citing *Nebbia v. New York*, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940 (1934)).

[17] *Id.; Hud Oil and Refining Co. v. City of Oklahoma City*, 167 Okl. 457, 30 P.2d 169 (1934).

[18] Okla. Const. art. 5, § 54 provides:

"The repeal of a statute shall not revive a statute previously repealed by such statute, nor shall such repeal affect any *accrued right*, or penalty, incurred, or proceedings begun by virtue of such repealed statute." (Emphasis added).

tured cause of action[19] not simply a right or privilege in general which accrues under proceedings which have begun. Amerada does not argue the existence of any accrued cause of action which has been disturbed by the Act.

Lastly, Amerada maintains under its due process challenge the provisions of the Act are unconstitutionally vague. In support of this contention, it construes various sentences of Section 544 as conflicting mandates requiring both unit allocation and contract allocation. It points to the second sentence thereof asserting it requires an allocation of all proceeds on a unit basis.[20] It further notes the language in the third and fourth sentences and asserts they appear to provide for sharing of gas proceeds on a contract basis.[21]

A general rule of statutory construction is that "[l]egislative acts are to be construed in such manner as to reconcile the different provisions and render them consistent

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[19] *Cowart v. Piper Aircraft Corp.*, 665 P.2d 315 (Okla. 1983); *Barry v. Board of Commissioners of Tulsa County*, 173 Okl. 645, 49 P.2d 548 (1935).

[20] The second sentence of 52 O.S. Supp. 1983 § 544 reads:

"The amount of gas produced daily, irrespective of the owner producing, belongs to, is owned by and shall inure to the benefit of each owner in the well in proportion to each owner's interest in the well.

[21] The third and fourth sentences of 52 O.S. Supp. 1983 § 544 read:

"Each owner who produces natural gas or casinghead gas and who separately sells or otherwise disposes of the gas must account to each other owner in the well not selling or otherwise disposing of gas from the well for that owner's part of the gas so disposed of or sold. In addition, each selling or disposing owner must compensate each owner not selling or disposing of gas from the well for that owner's proportionate part of the gas disposed of or sold."

and harmonious, and give intelligent effect to each."[22] In addition, this Court has stated:

> "A general rule is that all legislative enactments must be interpreted in accordance with their plain ordinary meaning according to the import of the language used."
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> and
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> "In determining legislative intention words, phrases, and expressions will be accorded their ordinary meaning when practical to do so, . . ."[23]

Futhermore, "a statute should be given a sensible construction, bearing in mind the evils intended to avoided or the remedy afforded."[24]

Applying these recognized principles relating to construction of legislative enactments to the present Act, we find the sensible construction to be given to the noted provisions is that urged by Seal and the Commission. The second sentence provides a general rule of ownership as to gas which is reduced to possession from a well to be given effect by the method set forth in the following sentences. The third and fourth sentences provide the method by which owners selling under contract are required to compensate other owners not selling under contract for their proportionate share of gas sold. Consequently, we find no merit in Amerada's argument as to vagueness.

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[22] *Eason Oil Corp. v. Corporation Commission,* 535 P.2d 283, 286 (Okla. 1975) (citing *Personal Loan & Finance Co. v. Oklahoma Tax Com'n,* 437 P.2d 1015 (Okla. 1968)).

[23] *Id.* (quoting *Alfalfa Electric Coop., Inc. v. First National Bank & Trust Co.,* 525 P.2d 644 (Okla. 1974)).

[24] *AMF Tubescope Company v. Hatchel,* 547 P.2d 374, 379 (Okla. 1976).

V.

Impairment of Contractual Obligations

We next address Amerada's contention that the Act impairs the obligations of contracts in violation of the Contract Clause of the federal and state constitutions.[25] In making this argument, Amerada maintains first that the Act creates a class of third party beneficiaries who benefit from existing gas purchase contracts contrary to the intention of the parties to the contract as required by 15 O.S. 1981 § 29. It points out that under the Act a non-contracting party benefits under the contract but has no apparent burdens. Consequently, in times of upward market price adjustment he would be free to sell his gas to another purchaser for a higher price than that provided in the contract from which he is benefitting, as his acreage would not be dedicated to the purchaser under the contract. As set forth in Part IV of this opinion, 15 O.S. 1981 § 29 does not support this argument. Nor does 52 O.S. Supp. 1983 § 542 support this position. The non-contracting party may reject an offer presented by the operator to purchase the gas; or if the operator has failed to present an offer within 120 days, after the non-contracting party has elected to allow the operator to market the gas, the election may be rescinded in writing. A non-contracting party, who has accepted an offer to purchase gas is bound by the agreement. Furthermore, we do not believe the Act creates a third party beneficiary contract. On the contrary, it affords no right to a third party to sue on another's contract. The benefits to the non-contracting party arise incidentally to the performance of the contract due to the rights created by the Act. Accordingly, Amerada's challenge under 15 O.S. 1981 § 29 has no merit.

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[25] The federal Contract Clause provides that "[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts . . . " U.S. Const., art. I, § 10, cl. 1. Similarly, the comparable state constitu-

Secondly, Amerada asserts the Act impairs the obligations under the royalty clause contained in many existing oil and gas leases which generally provide for allocation of production from a well on a unit basis for owners of royalty interests and an allocation on a tract basis for owners of working interests. Under this scheme of allocation pursuant to this Court's interpretation of 52 O.S. 1961 § 87.1 in *Shell Oil Co. v. Corporation Commission,* 389 P.2d 951 (Okla. 1963), all burdens on the various working interests, other than the statutorily recognized one-eighth royalty paid proportionately by each working interest owner to each holder of a royalty interest in a well, were satisfied from the portion of production allocated to the working interest to which they were attached. In *Shell Oil Co., supra,* the Court interpreted the statutory scheme of allocation as superseding the terms of lease agreements as understood by the industry. Although the industry may have arranged its affairs in accordance with the *Shell Oil Co.* case, the current scheme is likewise subject to subsequent actions of the Legislature which may also have a disturbing effect. We simply cannot agree that parties have an accrued right to an allocation of proceeds of gas pursuant to Section 87.1 as interpreted in *Shell Oil Co.* The statutory allocation scheme which altered existing contract terms, like all legislation setting forth the terms on which private parties may execute contracts, is subject to revision or repeal. Moreover, the existence of an atmosphere of pervasive regulation of the natural gas industry[26] strongly suggests the parties had no legitimate expectation that the statutory scheme was a stable, unchanging one. Interest owners thus must hold their interests with the knowledge that the

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tional provision contained in Okla. Const., art. 2, § 15 provides that "nor any law impairing the obligation of contracts, shall ever be passed."

[26] *See e.g., Energy Reserves Group, Inc. v. Kansas Power & Light Co.,* 459 U.S. 400, 413, 103 S.Ct. 697, 705, 74 L.Ed.2d 569 (1983).

State retains substantial regulatory power over those interests.[27]

Thirdly, Amerada asserts the Act unconstitutionally impairs contract rights because it modifies the terms of the "standard" operating agreement by converting the operator's *right* to sell gas on behalf of owners who do not have a contract into an *obligation*. In addition, it argues the Act eliminates the right of an interest owner to take gas in kind and separately dispose of his own share of production which owners generally had under the operating agreement. It notes Section 544 of the Act requires an owner taking in kind to share his market immediately with other owners in the unit and then argues this arbitrary "across the board" application, irrespective of particular circumstances, does not allow equitable balancing pursuant to long standing custom and practice in the industry.

In connection with custom within the industry, we have stated: "Custom or usage repugnant to expressed provisions of statute is void."[28] Accordingly, no amount of custom can be the basis for our decision herein. We therefore cannot conclude that the Legislature impaired a private contractual right simply by enacting legislation that was contrary to industry custom and practice. Moreover, Section 542(D) expressly provides: "Nothing in this act shall be construed to prevent any owner or owners . . . from taking their share of production in kind or separately disposing of their share."

The United States Supreme Court has addressed Contract Clause challenges to oil and gas state legislation in two recent opinions. In *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 103 S.Ct. 697, 74 L.Ed.2d 569 (1983),

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[27] *Id.*

[28] *Tenneco*, 687 P.2d at 1054 (quoting *Okla. N.M. & P. Ry. Company v. Downey*, 116 Okl. 253, 244 P. 173 (1926)).

the Court upheld the constitutionality of a Kansas act which imposed price controls on the intrastate gas market with regard to contracts executed before April 20, 1977, and prohibited consideration either of ceiling prices set by federal authorities or of prices paid in Kansas under other contracts in the application of governmental price escalator and price redetermination clauses. In 1975, a natural gas producer had entered into intrastate gas sales contracts with a public utility which contained a governmental price escalator clause and a price redetermination clause. The Court rejected the public utility's argument that the Kansas act violated the Contract Clause because it diminished the effect of the indefinite escalator clause in the contracts by limiting the increases allowed under the Natural Gas Policy Act (NGPA). No sufficient impairment of the public utility's contract was found to give rise to a Contract Clause challenge. The two factors which influenced the Court's decision were, first, the finding that it was highly unlikely at the time of execution of the contracts that the public utility anticipated the deregulation of gas prices introduced by the NGPA and; thus, the public utility did not have a reasonable expectation to receive deregulated prices which would have been impaired by the Kansas act. And, second, the parties were operating in a heavily regulated industry; therefore, the public utility knew its contractual rights were subject to alteration by state price regulation.

In *Exxon Corp. v. Eagerton*, 462 U.S. 176, 103 S.Ct. 2296, 76 L.Ed.2d 497 (1983), the Alabama statute under review increased the severance tax on oil and gas extracted from Alabama wells, exempted royalty owners from the increase and prohibited producers from passing on the increase to their purchasers. The Court held the royalty owner exemption and the pass-through prohibition did not impair the obligations of contracts in violation of the Contract Clause. Although the Court found the pass-through prohibition affected contractual

obligations of which producers were beneficiaries, it concluded the prohibition did not offend the Contract Clause. The Court noted as the distinguishing factor in this case:

> "[T]he pass-through prohibition did not prescribe a rule limited in effect to contractual obligations or remedies, but instead imposed a generally applicable rule of conduct designed to advance 'a broad societal interest' protecting consumers from excessive prices." *Exxon Corp.*, 462 U.S. at 191, 103 S.Ct. at 2306 (Citation omitted).

In footnote the Court stated its conclusion was buttressed by the fact that appellants operate in industries that have been subject to heavy regulation.

The essence of the appropriate Contract Clause standard articulated by the Court in these two cases is as follows: The threshold determination is whether the legislation has substantially impaired contractual rights. If no substantial impairment exists, the analysis is at an end and the legislation is upheld. If substantial impairment is found, it is justified only if the State's legislation is addressed to "a significant and legitimate public purpose . . . such as the remedying of a broad and general social or economic problem"[29] and the means selected to achieve that end is based " 'upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.' "[30] The determination of the necessity and reasonableness of the means chosen is deferred to legislative judgment unless the state itself is a contracting party.

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[29] 459 U.S. at 411-412, 103 S.Ct. at 704-705.

[30] 459 U.S. at 412, 103 S.Ct. at 705 (quoting *United States Trust Co. v. New Jersey*, 431 U.S. 1, 22, 97 S.Ct. 1505, 1517, 52 L.Ed.2d 92 (1977)).

Applying this standard to the present case, our initial determination is whether the Act has, in fact, operated as a substantial impairment of a contractual relationship. In determining the severity of the impairment consideration is given to the parties' reliance upon the contractual rights and obligations allegedly impaired.[31]

Amerada asserts the Act substantially impairs existing contractual relationships in that it negates the right accorded by a joint operating agreement to every party to the agreement to take in kind or separately dispose of his share of production and retain the benefits, i.e., production revenues, of such right. It further contends that such parties possessed a legitimate contractual expectation that such right was secure and not subject to being abrogated by subsequent legislation. We disagree.

The State of Oklahoma like the State of Kansas in *Energy Reserves Group, Inc.*, has extensively and continuously regulated the natural gas industry. Although Oklahoma has not required a ratable sharing of proceeds specifically, it has regulated production and purchasing in the industry. Much of Amerada's assertions necessarily fall with our foregoing conclusion that the parties could not have reasonably expected that their contractual rights were immune from alteration by subsequent State regulation. We thus find Amerada's reasonable expectations have not been substantially impaired by the Act.

Even if an impairment were found, the Act was enacted to protect a broad societal interest, i.e., the protection of correlative rights. We are not persuaded by Amerada's contention

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[31] *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 245, 98 S.Ct. 2716, 2723, 57 L.Ed.2d 727 (1978); *cf. Energy Reserves Group, Inc.*, 459 U.S. at 413-16, 103 S.Ct. at 705-07.

that the Act is nothing more than "special interest legislation." To the contrary, the Act imposes a general rule of conduct for the natural gas industry.

VI.

The Rules

On December 21, 1983, the Commission promulgated the Rules to administer the provisions of the Act pursuant to Section 547 to be effective January 1, 1984. Amerada's primary position is the Rules are void *in toto* because the Act is unconstitutional. As we have previously found the Act constitutional this position has no merit. Seal challenges the validity of various provisions of the Rules and argues that such provisions are contrary to the express intent of the Act. Seal urges this Court to strike down the alleged conflicting Rules. The Commission, on the other hand, asserts the Rules do administer the purpose of the Act and urges sustention of the Rules *in toto.* The specific provisions attacked will now be addressed in turn.

Seal first attacks the validity of Rule 6-100[32] to the extent that it exempts parties to existing gas balancing agreements from the application of the Act. It argues these exclusionary

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[32] Rule 6-100 provides:

"A. All interest owners in a well producing natural gas or casinghead gas shall be afforded an equal opportunity to extract their fair share of gas and to sell said gas and to be paid in proportion to their interest therein. *In the event any interest owner in such a well is a party to a joint operating agreement, gas balancing agreement and/or any other written agreement, then to the extent that the provisions of such agreement or agreements expressly provide for the taking, sharing or gas balancing of gas produced from such well in a manner other than as set forth in these Rules, then such provisions shall bind that interest owner who is a party to such agreement or agreements as between the parties to the exclusion of the*

provisions of Rule 6-100 are in direct conflict with Section 541 which provides for the express purpose and intent of the Act to afford all interest owners an equal opportunity to extract, sell and be paid for their proportionate share of the gas produced. It further asserts such provisions are contrary to Section 544 which provides that each day's productions shall belong to each interest owner in proportion to each owner's interest. Additionally, it maintains if this Court limits the Act consistent with Rule 6-100, this will result in cutting off the receipt of royalty in excess of the basic ⅛th of royalty owners whose corresponding working interest owners have entered into gas balancing agreements in a manner other than as set forth in the Rules but have no gas purchase contract.

We believe that Section 542(D), which states that the Act shall not be construed to interfere with contractual rights or to prevent any owner from taking its share of production in kind or separately disposing of its share, also includes an owner's right to enter into gas balancing agreements which provide for the disposition between interest owners. We find nothing in the Act which expresses an intent to prevent such agreements.

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marketing, revenue sharing and gas balancing provisions provided hereunder.

"B. As used in Rule 6-100 through Rule 6-113:

1. 'Interest owner' is a working interest owner or any person in a well having the right to produce or separately dispose of his gas;

2. 'Contracted party' is any interest owner in an oil or gas well who is a party to a contract for the sale of gas produced from that oil or gas well;

3. 'Non-contracted party' is any interest owner in an oil or gas well who does not have a gas contract for his share of gas production *and who has not entered into any other agreement as provided above that governs the taking or sharing of gas* and, therefore, is not subject to the provisions of these Rules." (Emphasis supplied).

Moreover, contrary to Seal's contentions, such royalty owners' recovery is merely delayed until such time as the provisions of the pertinent gas balancing agreements come into effect, not precluded entirely. The exclusionary provisions were apparently designed to minimize the impairment of obligations under private contractual arrangements between interest owners to any extent greater than which is absolutely necessary to protect the rights and correlative rights of the parties. We reject, however, the Commission's construction of the Act raised on appeal in response to Seal's challenge to the Rule, under which royalty owners and overriding royalty owners would be accorded an independent right to produce gas and enter into contracts for its sale.[33] Upon an examination of the Act we find this construction was clearly not intended by the Legislature or the Commission. It is fundamental that an oil and gas lease grants to lessees the right to drill and produce. And, a concomitant principle is that royalty and overriding royalty owners (the mineral owners/lessors) are without the right to drill and produce for they have given up such right in exchange for a specified bonus consideration and royalty on production.[34] By bringing into balance the rights of all owners of the right to drill and produce the Act will also benefit royalty and overriding royalty owners whose rights derive from those of the owners of the right to drill and produce. We, therefore, conclude that Rule 6-100 does not vitiate the overall purpose of the Act.

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[33] The Commission relies upon the term "owner" as used in 52 O.S. Supp. 1983 § 542(A), (D) which we construe to mean parties who have a right to take their share of production in kind or to separately dispose of their share.

[34] *O'Neil v. American Quasar Petroleum Co.*, 617 P.2d 181, 184 (Okla. 1980); *Hinds v. Phillips Petrol Co.*, 591 P.2d 697 (Okla. 1979).

Seal contends Rule 6-102 erroneously limits the application of the gas balancing provisions of the Act to proceeds of production received on or after May 3, 1983, the effective date of the Act. It argues the revenue sharing provisions of the Act have full retroactive effect as to revenue received prior to May 3, 1983. In support of this argument it references legislative history including the comments of one of the co-authors of the Act regarding its intent and purpose and also S.C. Resolution No. 7 of the Legislature.

We first note, "[a] cardinal principle of statutory construction is that where the language of a statute is plain and unambiguous and the meaning clear and unmistakable, there is no room for construction, and no justification exists for interpretive devices to fabricate a different meaning." [35] Also, "[i]t is the rule of statutory construction that all statutes are to be construed as having a prospective operation unless the purposes and intention of the Legislature to give them a retrospective effect is expressly declared, or is necessarily implied from the language used." [36]

We conclude that the Legislature's use of particular language in the Act evidences an intent that it is to be applied prospectively only. Furthermore, the Legislature does not expressly declare, nor by implication, that the Act should have retroactive effect. For instance, Sections 543 and 544 provide for "on and after the effecive date of this act" and speak in terms of the present tense. We find the Act is to be applied prospectively only and thus sustain the validity of Rule 6-102.

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[35] *In re Guardianship of Campbell*, 450 P.2d 203 (Okla. 1966).

[36] *Hammons v. Muskogee Medical Center Authority*, 697 P.2d 539 (Okla. 1985); *Wickham v. Gulf Oil Corp.*, 623 P.2d 613 (Okla. 1981); *Good v. Keel*, 29 Okl. 325, 116 P. 777 (1911).

Seal next challenges specific provisions of Rules 6-101, 6-102, 6-103, 6-107 and 6-112 on the basis that such Rules are in conflict with the provisions of 52 O.S. Supp. 1985 § 540 as incorporated in the Act by Section 545.[37] Rule 6-101 provides for sharing of proceeds of sales of natural gas as between contracted and non-contracted parties in gas sales contracts entered into on or after January 1, 1984, the effective date of

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[37] 52 O.S. Supp. 1985 § 540 provides in relevant part:

"A. The proceeds derived from the sale of oil or gas production from any oil or gas well shall be paid to persons legally entitled thereto, commencing no later than six (6) months after the date of first sale, and thereafter no later than sixty (60) days after the end of the calendar month within which subsequent production is sold. Such payment is to be made to persons entitled thereto by the first purchasers of such production.... The first purchaser shall be exempt from the provision of this subsection and the owner of the right to drill and to produce under an oil and gas lease or force pooling order shall be substituted for the first purchaser therein where the owner and purchaser have entered into arrangements where the proceeds are paid by the purchaser to the owner who assumes the responsibility of paying the proceeds to persons legally entitled thereto."

"B. Any said first purchasers or owner of the right to drill and produce substituted for the first purchaser as provided herein that violates this act shall be liable to the persons legally entitled to the proceeds from production for the unpaid amount of such proceeds with interest thereon at the rate of twelve percent (12%) per annum, calculated from date of first sale."

52 O.S. Supp. 1983 § 545 provides:

"Proper distribution of revenues from the sale of production from the well shall be made pursuant to the provisions of Section 540 of Title 52 of the Oklahoma Statutes. If any owner receives revenues directly from the purchaser within which other owners are entitled to share ratably, the owner receiving such revenues shall forward the same to the party responsible for distribution pursuant to the provisions of Section 540 of Title 52 of the Oklahoma Statutes."

the Rules. Similarly, as discussed above, Rule 6-102 provides for revenue sharing between contracted and non-contracted parties for sales of gas on or after May 3, 1983, up to the effective date of the Rules under contracts entered into prior to May 3, 1983, the effective date of the Act. Rule 6-103 provides for revenue sharing between such parties for gas sales on or after the effective date of the Act and prior to the effective date of the Rules under contracts entered into during the same period. The provisions of all three Rules are similar except they are each addressed to different situations concerning the date of production and the date of entry into a gas purchase contract as such dates relate to the effective dates of the Act and the Commission's Rules. Common to each of these Rules is the provision that "each contracted party shall distribute revenues, pursuant to the provision of 52 O.S. 1981 § 540 [amended 1985], to such non-contracted parties to the extent of that party's interest in the revenue from the sale of each contracted party's gas production sold."[38]

Section 540 expressly governs the payment of royalties on production from an oil or gas unit. The obligation for payment of royalties is placed initially on the first purchaser of production. However, a first purchaser may be exempted from this obligation if it enters into an arrangement with an "owner of the right to drill and to produce under an oil and gas lease or force pooling order" and such owner assumes the obligation. Seal initially maintains the quoted language creates two distinct classes of owners qualified to assume the obligation — lessees in units not subject to force pooling and operators of force pooled units. Although Seal inconsistently later asserts

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[38] Rules 6-101(D), 6-102(C)(3) and 6-103(D). See also Rules 6-101(F), 6-102(E) and 6-103(D) which require the contracted parties to distribute revenues to the non-contracted parties pursuant to Section 52 O.S. Supp. 1985 § 540.

that an operator is the only proper party to substitute for a first purchaser under Section 540 regardless of whether a unit is voluntarily pooled or forced pooled. Seal argues Rules 6-101, 6-102 and 6-103, in their references to the responsibilities of contracted parties to make distribution of production proceeds to non-contracted parties, ignore the provisions of Section 540 which, under its interpretation, only operators may be substituted for first purchasers in assuming responsibility for payment.

Upon a proper reading of the Rules as they relate to Section 540, it is clearly demonstrated that no conflict exists. Under the plain meaning of Section 540, an owner of the right to drill, whether such right was acquired by lease or by force pooling, may be substituted for the first purchaser in taking responsibility for royalty payments under a suitable arrangement. Rules 6-101(F), 6-102(E) and 6-103(F) provide that the contracted party shall pay or cause to be paid to the non-contracted party its share of such proceeds. Each contracted party is an "owner in an oil or gas well who is a party to a contract for the sale of gas produced from that oil or gas well."[39] A contracted party will either have assumed the obligation of disbursement of gas production proceeds pursuant to Section 540 or such responsibility will be left upon the first purchaser, depending upon the terms of a particular gas purchase contract.

Seal also relies on its erroneous construction of Section 540 in arguing Rule 6-107 is violative of the requirements of Section 540. Rule 6-107(A) requires each working interest owner to be responsible for payment of all royalties, overriding royalties and other payments for which it is obligated by law, lease or contract. However, Rule 6-107(B) allows an interest

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[39] Rule 6-100(B)(2).

owner to enter into an agreement for the manner in which actual disbursement will be made and the party who will make such disbursement. Based upon a proper interpretation of Section 540, we find Rule 6-107 is also valid.

Section 540(A) additionally imposes a time frame requirement for distribution of revenues that gas production proceeds be paid to the persons legally entitled thereto, commencing, with certain exceptions, no later than six months after date of first sale, and thereafter no later than sixty days after the end of the month in which subsequent sales are made. Seal asserts that various provisions of the Rules violate the time of payment requirements of Section 540(A).[40] The Commission maintains the incorporation of Section 540 into the provisions of the Act by the Legislature was to provide a working framework for the distribution of funds between parties as production was sold. Additionally, it contends Section 540 was designed to apply to the scenerio where production has just begun, and has no application to the balancing of proceeds accrued from past sales. We disagree. We believe the Legislature in enacting

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[40] Rule 6-102(C)(3) provides for payment of production sold between the date of the effectiveness of the Act and the effective date of the rules "in equal monthly amounts over a period of the succeeding eight (8) months." Similarly Rule 6-103(D)(3) provides for payment, with respect to gas sold on or after the effective date of the Act and prior to the effective date of the Rules, under contracts entered into during the same period, "with equal monthly amounts over a period of time equal to the number of whole months from the date of first production . . ." to the effective date of the Rules. Also, Rule 6-104(C)(1) provides that in the event a contracted party's gas contract expires, and he subsequently revenue shares, any underproduction attributable to him shall be carried forward until such time as he enters into a new contract or upon well depletion. Rule 6-104(F) requires cash balancing, without interest, on well depletion, for wells commencing production prior to the effective date of the Act.

Section 545 clearly incorporated the time frame provisions of Section 540 into the gas balancing scheme. We conclude the various time frames in which payment is to be made as set forth in the challenged Rules are inconsistent with the provisions of Section 540 as incorporated by Section 545 and are thus invalid.

Seal's final argument with regard to Section 540 pertains to Rule 6-112 which provides that an operator or contracted party who undertakes any obligations under the Rules shall have no liability thereunder, except in the case of gross negligence or willful misconduct. It is argued that Rule 6-112 fails to give effect to Section 540(B)'s provision for an assessment of a twelve percent interest penalty on any failure to pay under the term's of Section 540(A), and is, thus, invalid. The Commission argues to the contrary, that the Legislature only intended to adopt Section 540's scheme for distribution of revenues as to the parties responsible for the distribution and did not incorporate the penal provisions of Section 540 in the Act's reference to such Section.[41] In support of this argument the Commission asserts that "[f]orfeitures or penalties cannot be created by judicial implication, but must be expressly imposed by statute."[42] We find the penalties for failure to comply with the provisions of Section 540(A) were expressly incorporated into the Act based upon the actual words of Section 545 and there is no need to create such by judicial construction. Section 545 refers to the provisions of Section 540 and does not limit the scope of incorporation of Section 540 to only Subsection A thereof. Accordingly, we find Rule 6-112 invalid insofar as it does not incorporate the penalty provisions found in Section 540(B).

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[41] *See, supra,* note 37.

[42] *Incorporated Town of Bennington v. First National Bank of Bennington,* 172 Okl. 164, 44 P.2d 872 (1935).

Seal next argues Rule 6-104(E) is invalid insofar as it provides for a twenty-five percent limitation on the reduction of an overproduced contracted party's shares to achieve balancing which is allegedly contrary to the express provisions of the Act.[43] It contends this Rule affects two classes of working interest owners: (1) working interest owners who have affirmatively elected not to share in revenues after the effective date of the Act, and (2) working interest owners who are excluded from the gas balancing provisions of the Act by Rule 6-100. Seal maintains the Act does not provide for balancing in kind and if it were to be used, the rules should have provided that all future sales proceeds are to be paid to the underproduced working interest owners and their corresponding excess royalty owners until such time as the imbalance is corrected, without a twenty-five percent limitation requirement on the overproduced working interest owners' shares. The Commission counters that such a blanket provision as urged by Seal could only be expressly imposed by the Legislature as it could unduly penalize parties who have produced their full allowable. We are not persuaded. The Rule prevents non-contracted

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[43] Rule 6-104(E) provides:

"Any party governed by the provisions of this Rule who ultimately enters into a contract to separately sell or dispose of his share of gas, shall not make any such contract initially effective until the first day of the second month following notice to all contracted parties. He shall thereafter be eliminated from subsequent accounting for his share of the gas to the well operator by such contracted parties. Instead, he shall then inform all contracted parties in the well that he is now a contracted party and he shall begin accounting to the well operator and to all non-contracted parties pursuant to Rule 6-101, 6-102 or 6-103. When the newly contracted party begins to take his share of gas, *plus additional make-up gas to get into balance,* in no event shall any other contracted party's share be reduced by more than twenty-five percent (25%)." (Emphasis added).

working interest owners from achieving a balanced position in the well by impeding their balancing capabilities so that they will never be allowed to get back into balance. We hence hold the challenged portion of Rule 6-104(E) invalid.

Seal argues Rule 1-108 which assesses a one percent administrative cost against each non-contracted party who elects to share in revenues is contrary to law, inequitable and deprives parties of their property without due process of law.[44] It asserts the Commission has no authority to require a reduction in the ratable share to be distributed to non-contracting parties. The Commission seeks to justify the imposition of the assessment of administrative costs on the basis that such non-contracted parties will benefit from an imposed quasi-contractual relationship created by Section 544 and thus should bear the cost of it, citing *Welling v. American Roofing and Sheet Metal Co.,* 617 P.2d 206 (Okla. 1980). It is further argued by the Commission it would be inequitable not to compensate the contracted parties for the expenses incurred in satisfying their obligation to account and to revenue share. Additionally it asserts that merely because the rate set is only an estimate of the actual costs does not mean that the rate has no actual relationship to the expenses incurred by revenue sharing. It contends the specific rate set is a reasonable estimate of administrative costs. We agree.

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[44] Rule 6-108 provides:

"Each non-contracted party in a well who revenue shares under Rule 6-101, 6-102, or 6-103 shall be subject to a monthly administrative expense of one percent (1%) of that amount of revenue due and owing as payment for that month, and in no event less than Five Dollars ($5.00). Said expense shall be billed by the operator, or shall be withheld by the contracted party from the gas revenue due to the non-contracted party, unless a separate arrangement is agreed upon in writing by the parties subject hereto."

Seal's final challenge to the Rules is concerning the negligence or willful misconduct standard in hearings before the Commission imposed by Rule 6-112. Seal seeks clarification of this Rule in relation to Section 547 which grants the Commission the power to enforce penalties for violations of the Act and also affords the right to injured parties to recover treble damages for violations of the provisions of the Act in district court. The Commission attempts to justify Rule 6-112 by asserting such Rule has no application to district court treble damage remedies authorized by Section 547. It maintains an action before the Commission to recover on liabilities from a breach of obligations imposed by the Rules is a totally separate and distinct action from one in district court for breach of the statutory duties. We find no distinction for the Rules were promulgated to administer the purpose of the Act. The practical effect of different standards for measuring liability in district court and the Commission would force parties to seek their remedies in district court where treble damages may be recovered without fault. We find the standard for penalties to be enforced by the Commission for violations of the Act and the Rules promulgated for its administration should be that imposed by Section 547 for district court actions. We therefore find Rule 6-112 to be invalid in this regard.

VII.

Conclusion

We conclude that the Act is constitutional. We further affirm the provisions of the Rules challenged herein except Rules 6-104(E), 6-102(C)(3), 6-103(D)(3), 6-104(C)(1), 6-104(F) and 6-112. We find invalid Rule 6-104(E) insofar as the twenty-five percent limitation on the reduction of an over-produced contracted party's shares to achieve balancing for it impedes non-contracted working interest owners' capabilities

from ever achieving a balanced position in the well. We also find the time frames in which payment is to be made found in Rules 6-102(C)(3), 6-103(D)(3), 6-104(C)(1) and 6-104(F) are inconsistent with the provisions of Section 540 as incorporated by Section 545. We further reject Rule 6-112 which requires a different standard of measuring liability for violations of the Act and Rules thereunder in actions brought in the Commission as those actions brought in district court under the authority of 52 O.S. Supp. 1983 § 547 for the recovery of threefold damages for violations of the Act. Moreover, Rule 6-112 fails to incorporate the interest penalty provisions found in Section 540(B) as required by Section 545. We therefore find Rule 6-112 invalid.

Concur: SIMMS, C.J., DOOLIN, V.C. J., OPALA, WILSON, KAUGER, JJ., and GRAY, Special Judge.

Concurs In Result: SUMMERS, J.

Dissents: HARGRAVE, J.

Disqualified: LAVENDER, J.

HARGRAVE, Justice, dissenting.

Whether the statutes examined here are prospective or retrospective, and whether the Corporation Commission rules correctly implement the statutes, are not dispositive of the issues presented here.

The Commission states, in the preamble of the rules implementing these statutes, that private contractual rights are subject to modification under the police power of the state to protect correlative rights. *Patterson v. Stanolind Oil & Gas Co.*, 182 Okl. 155, 77 P.2d 83 (1938). As said therein, it is well established that the police power of the state extends to protecting the correlative rights of owners in a common source

of supply. The lawful exercise of the state's power to protect the correlative rights of owners in a common source of oil and gas is not violative of state or federal due process guarantees when the subject of this restriction is a valid exercise of the state police power upon subjects within its scope.

The dispositive issue here is whether or not 52 O.S.1983 §§ 540-547 is a valid exercise of the state's police power. Do these statutes protect correlative rights? If so, the established law affirms such action is a valid exercise of the police power of the state.

In the recent case of *Samson Resources Co. v. Corporation Com'n.*, 702 P.2d 19 (Okl.1985), this Court referred to *Kingwood Oil Co. v. Corporation Commission,* 396 P.2d 1008, 1010 (Okl.1964), for a definition of correlative rights.

> "The term 'correlative rights' has been defined as a convenient method of 'indicating that each owner of land in a common source of supply of oil and gas has legal privileges as against their owners of land therein to take oil and gas therefrom by lawful operations conducted on his own land, limited, however, by duties to other owners not to injure the source of supply and by duties not to take an undue proportion of the oil and gas'. Summers, Oil and Gas, Vol. 1, Sec. 63."

Immediately following that definition the Court referred to *United Petroleum Exploration, Inc. v. Premier Resources, Ltd.*, 511 F.Supp. 127 (W.D.Okl.1980), for a refinement of the term correlative rights which this Court has accepted in *Tenneco Oil Co. v. El Paso Natural Gas Co.*, 687 P.2d 1049 (Okl.1984).

> "From this it can be seen that correlative rights are those rights which one owner possesses in a common source of supply in relation to those rights possessed by other owners in the same common source of supply. At this

> point, it must be emphasized that a common source of supply in which the owners of mineral interests possess correlative rights is the underlying geological strata from which the oil and gas is produced, rather than the well through which the oil and gas is reduced to possession. See, 52 Okla. Stat. 1971 § 86.1(c)."

It is clearly established that this Court is committed to the tenet that correlative rights refers to the mutual obligations of the separate owners of a common source of supply. Our definition of the term expressly negates the premise that correlative rights refers to the mutual obligation of owners of a single wellhole. *Samson, supra,* states:

> "The relief requested by Tenneco in this case, the replacement of an operator designated under a voluntary pooling agreement in order to protect 'correlative rights', is clearly beyond the Commission's conferred jurisdiction, as it concerns a dispute between private parties in which the public interest in correlative rights is not involved . . . ."

The police power is the power to enact laws, to promote order safety, health, and general welfare of society. A legislative police power enactment is not conclusive of an asserted public interest or general welfare. This is a matter that is always open to judicial inquiry, and a determination of what is a proper exercise of the police power is always subject to supervision of the court. *Gates v. Easter,* 354 P.2d 438 (Okl.1960). The public interest required to be present before private property may be subject to public regulation must amount to something more than a desire to regulate conceived out of personal concern as to future events, convenience or covetous use of another's property. It does not mean anything so narrow as mere curiosity, or the interests of particular localities which may be affected by the matters in question.

Oklahoma Natural Gas Co. v. Choctaw Gas Co., 205 Okl. 255, 236 P.2d 970 (1951).

As discussed, correlative rights refers to mutual duties and obligations of owners of a common source of supply. Regulation of the allocation of benefit derived from production from a single well is not an act designed to protect correlative rights, but is instead an attempt to legislate relationships established by private contractual agreements. Such legislation does not protect correlative rights as argued by the Commission, nor is it a valid exercise of the police power. Such regulations are not designed to promote the general public welfare, but, to regulate private contractual rights for the benefit of certain parties owning an interest in a single wellhole. As such the regulations here examined are found not to be a valid exercise of the police power. In its effect these regulations stand on the same theoretical footing as that struck down in *Thompson v. Consolidated Gas Utilities Corp.*, 300 U.S. 55, 57 S.Ct. 364, 81 L.Ed. 510 (1937). *Thompson* was referred to in *Oklahoma Natural Gas Co. v. Choctaw Gas Co., supra. Thompson* states:

> "But the sole purpose of the limitation which the order imposes upon the plaintiffs' production is to compel those who may legally produce, because they have market outlets for permitted uses, to purchase gas from potential producers whom the statute prohibits from producing because they lack such a market for their possible product. Plaintiffs' operations are neither causing nor threatening any overground or underground waste. Every well owner in the field is free to produce the gas, provided he does not do so wastefully. He is legally and, so far as appears, physically free to provide himself with a market and with transportation and marketing facilities.
>
> [T]he purpose of the Commission underlying these orders was, upon a theory of protecting correlative rights, to

> coerce complainant and other [others] similarly situated to buy gas from, and thus to share their private marketing contracts and commitments and the use of their pipe lines and other facilities for transmitting their gas to market with the owners of wells not now connected to pipe lines, who have not contributed in money, services, negotiations, skill, forethought or otherwise to the development of such markets and the construction of such pipe lines and other facilities. In short to compel complainants to afford markets to those having none."

The act examined in this case has substantially the same effect as that examined in *Thompson, supra.* The statutory scheme established by the act simply rearranges the contractual obligations of private individuals for the benefit of a subclass of well owners not having a contract to sell their product. As such it is not a proper exercise of the state's police power, for the law benefits one subclass of well owners at the expense of others and is thus not designed to benefit the general welfare of the people of the state. Nor can the act be said to prevent waste or protect correlative rights. The Corporation Commission has attempted to ameliorate the obvious constitutional flaws with the act by enacting rules which, in effect, emasculate the act. Statutes should be construed so as to uphold their constitutionality, but in this instance it is obvious that the construction given the act is not supportable by a plain reading of it. The construction given the act by the Commission's rules is an attempt to rewrite the act, not interpret it.

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

IN RE: RULES TO ENFORCE AND ADMINISTER THE PROVISIONS OF ENROLLED HOUSE BILL NO. 1221, RELATING TO SHARING RATABLY IN REVENUES.	GENERAL CAUSE NO. 28356 ORDER NO. 250466

ORDER PROMULGATING RULES

(Approved December 21, 1983)

PROCEDURAL HISTORY

On May 3, 1983, Governor George Nigh signed into law Enrolled House Bill No. 1221, hereinafter 52 O.S. Supp. 1983, §§ 541 et seq. Section 547 of Title 52 empowers the Oklahoma Corporation Commission ("Commission") to promulgate rules and regulations to administer the Act.

On June 16, 1983, the Commission issued a Notice of Proposed Rulemaking ("First Notice") setting forth the rules by which the Commission proposed to administer the act. The Notice, published as required by law and the rules of the Commission, required that written comments and alternate rules be received by July 25, 1983. At the request of several parties, the comment period was subsequently extended to August 15, 1983.

By the conclusion of the comment period, 16 parties filed comments. The Commission found merit in many of the comments and alternate rule proposals submitted. Therefore, the Commission extensively revised its original rules proposal and republished the revised rules proposal ("Second Notice") for an additional comment period.

Due to the additional comment period permitted on the Second Notice, the Commission dismissed as moot Motions requesting an extension of the original comment period. As to Motions requesting a public hearing, the Commission found that it would be useful to have a public hearing and set a hearing for October 27, 1983.

The most comprehensive proposal submitted was that of Sun Exploration and Production Company ("Sun"). The Commission drew heavily upon Sun's proposal in drafting the Second Notice.

The Commission further found that discussion had occurred in great detail concerning whether the provisions of the act required or authorized retroactive application, i.e. to contracts entered into prior to May 3, 1983 (the effective date of the act) or to production under any such contracts. Therefore, the Commission, desiring parties to focus on the retroactivity question, included in its Second Notice a proposed Rule 6-102 which would retroactively apply the provisions of the act. The Commission proposed a separate Rule to govern contracts entered into on and after May 3, 1983.

The Second Notice of Proposed Rulemaking was published as required by law. Parties were given until October 24, 1983, to file comments and the cause was set for hearing before the Commission sitting en banc on October 27, 1983, at 9:00 a.m.

Thereafter, 16 parties filed comments.

The Cause came on for hearing before the Commission sitting en banc on October 27, 1983.

By the filing of comments, the filing of an Entry of Appearance or by an Entry of Appearance made at the time of the hearing, some 66 parties appeared in this cause. The names of those appearing and their representatives are listed at Attachment A to this Order.

At the hearing, Staff requested and was granted authority to publish an Amended Second Notice of Proposed Rulemaking in Adair, Carter, Comanche, and Ottawa Counties. For reasons related to the U.S. mails, publication had not been timely obtained in those four countries. No parties protested proceeding with the hearing after being informed that the Commission would keep the record open and possibly hold another hearing as a result of the limited additional noticing. Thereafter, such Notice was filed October 28, 1983, and timely published in the aforementioned four counties. The Notice set forth that the Commission had proceeded with its hearing on October 27, but that "should any interested party from Adair, Carter, Comanche or Ottawa Counties wish to be heard in this matter, the Commission reserves the right to set a special hearing and/or to issue a supplemental order herein." Pursuant thereto, interested parties were requested to file written comments no later than November 18, 1983. No written comments or requests for hearing were filed.

During the hearing, certain questions arose in regard to the mechanics of the rules' operation. Therefore, the Commission extended the comment period until 4:30 p.m., Monday, October 31, 1983, in order to respond to certain problems that had arisen and arguments which had been made at the hearing. Thirteen additional sets of comments were timely filed.

After all testimony had been heard and all exhibits had been entered on the record, with leave to late-file proofs of publication in certain counties, the Commission closed the record and took this Cause under advisement.

This Cause now comes on for decision and order of the Commission.

SUMMARY OF EVIDENCE

At the hearing on October 27, 1983, Staff offered 67 exhibits, all of which were received into the record. Those exhibits included: a copy of Enrolled House Bill No. 1221; the First Notice of Proposed Rulemaking, and all proofs of publication, affidavits of mailing, comments, entries of appearance and motions filed thereto; Order Extending Comment Period; Second Notice of Proposed Rulemaking and all proofs of publication received, affidavits of mailing, comments, and entries of appearance filed thereto.

Lynn W. Stallings, Sun's Area Sales Manager for Gas, was called as an expert witness in gas contracting. Mr. Stallings sponsored Exhibit No. 68 which contained a synopsis of proposed Rules 6-100 through 6-113 and supporting rationale. Mr. Stallings testified as to the complexities of the proposed Rules, their purpose and feasibility. Mr. Stallings testified that, under proposed Rule 6-112 (effective date), in the case of a newly-drilled well, a party has 180 days from sale before revenues are due to be paid to interest owners. In the case of an existing well, only sixty days were alloted. Mr. Stallings testified that the sixty-day period left insufficient time to exchange information among the parties and to perform the necessary administrative accounting procedures.

Mr. Stallings also testified regarding proposed Rule 6-106 (special circumstances; parties selling under a joint operating agreement) and the reasons therefor. Sales under joint operating agreements are, Stallings said, common in the industry; therefore, some treatment must be provided for parties who are neither wholly non-contracted nor contracted in the legal sense of the word. A party whose gas is being sold under a joint operating agreement has its gas included as a part of the operator's volume accounting. Because the party does not have a contract, that party should not be subject to individual

revenue sharing, but because that party does have an agreed-upon arrangement, he should not be considered a non-contracted party who is permitted to make an election under the Rules. The witness testified that joint operating agreements are common marketing arrangements not apparently contemplated by House Bill No. 1221, but that it is a common practice in the industry and needed to be addressed.

Mr. Stallings further testified regarding proposed Rule 6-107 (purchaser contract reports) which would require the sharing of pricing information among the parties, placing the burden for such filings on the purchaser. Mr. Stallings explained that the burden should be on the purchasers due to producers' concerns regarding potential anti-trust liability.

Mr. Stallings testified that there was a problem in the language of proposed Rule 6-101(B) (operator markets; election prior to production). The language "under terms and conditions no less favorable than those, if any, received by the operator," did not take into account arrangements made entailing expenditures to obtain a contract, e.g. expenditures made to get a pipeline into the area. Also of concern was the use in the rule of subjective terms and conditions such as "favorable" or "unfavorable". He made no specific suggestion.

Lastly, Mr. Stallings testified to the use of the term "finally expires" and its definition found in proposed Rule 6-105 (special election upon expiration of a gas contract). His concern centered on the Federal Energy Regulatory Commission's (FERC's) definition of "contract" and the FERC's desire for consistency in treatment of contracts. Mr. Stallings testified that under FERC rules gas committed to an interstate pipeline before 1978 is committed to that pipeline for the life of the lease whether the contract by its own terms continues or not. The operator cannot abandon and cannot change purchasers. If the operator obtains a new contract with slightly

different terms, it is still regarded as the same contract. It is called a roll-over of the old contract. Stallings testified that those roll-over contracts would be included in the definition of "finally expires."

John D. West, Sun's Manager of Lease Gas Accounting, testified as an expert witness in gas accounting as to the feasibility of the Rules from an accounting standpoint. Mr. West testified as to proposed Rule 6-108 (payments on production) in regard to permitting parties to make arrangements as to how the disbursements will be made in regard to taxes, production payments, royalty payments, etc. Mr. West testified that it is common practice in Oklahoma for the operator to disburse the ⅛ "Blanchard" royalty. Anything in excess of the ⅛ royalty must be disbursed by the working interest owner who is burdened with those payments.

Mr. West testified as to proposed Rule 6-109 (administrative expense). Mr. West stated that the administrative expense set forth therein was probably inadequate but the anticipated administrative expenses were hard to estimate. Mr. West was unable to estimate Sun's anticipated expense to administer the Rules.

Galen Ward, Attorney, appearing for Phillips Petroleum Company, stated that Phillips has approximately 6,000 wells with all but approximately 250 wells contracted for 100% of production. Mr. Ward requested an exception from the reporting requirements of proposed Rule 6-107 (purchaser contract reports) for those wholly contracted wells. To do otherwise would be to place a burden not contemplated by the statute and, in fact, would not address the evil that the statute attempted to remedy. Mr. Ward also spoke to the subject of sales under operating agreements, with particular regard to a small interest owner who has not executed an operating agreement but who is being paid as though he were. In effect, Mr.

Ward stated, such a party is acting as if he were a contracted party and, therefore, should be treated as a contracted party. Mr. Ward estimated Phillips' cost of implementing the proposed rules at $1 million. Mr. Ward also questioned whether the Rules should have retroactive application.

Robert Isaac, Amarex, Inc., questioned why the Rules require disbursement of revenues within 60 days after the end of the calendar month during which production is produced and sold. He stated that there are many instances in which gas is produced and sold yet there is no distribution from the purchaser due to title problems, signing of division orders, etc.

In answer to his question, *Pat Moore,* Attorney, appearing for Sun, explained that the act requires compliance with 52 O.S. § 540 which contains a sixty-day disbursement requirement. Mrs. Moore testified that § 540 should be interpreted as meaning that the sixty days runs from the time that the party responsible for making disbursements receives the proceeds to be disbursed.

William C. Liedtke, III, Attorney, appearing for Trigg Drilling Company, raised a question regarding the determination of who are non-contracted parties. He queried as to what would constitute sufficient evidence of continuing title in a non-contracted party warranting payment by the contracted party to the non-contracted party.

William J. Legg, Attorney, appearing for Michigan-Wisconsin Pipe Line Company, made statements regarding proposed Rules 6-102 (revenue sharing under gas contracts in existence prior to May 3, 1983; election in a producing well) and 6-107 (gas purchase contract reports). Mr. Legg's understanding was that proposed Rule 6-102 applied to contracts entered into prior to May 3, 1983, but not the gas sold prior to May 3, 1983, under those contracts. He relied on the statutory language to the effect that sharing of gas would commence after the

effective date of the act. Mr. Legg suggested that proposed Rule 6-102 should not be adopted until resolution of the issue of unconstitutional interference with contracts by retroactive application was resolved in pending court litigation. As to proposed Rule 6-107, Mr. Legg objected to the purchaser bearing the reporting burden under the Rule in light of the same questions or potential anti-trust liability which give concern to the producers.

William Christian, Attorney, referring to the definition of "contracted party" found in proposed Rule 6-100(B)(2) (general provisions), called to the Commission's attention the contract law doctrine that one who over a period of time accepts the benefits of a contract even though he is not a signatory party to that contract may be bound to the contract and bound to carry the burden thereof just as if he were a signatory party.

James Allison, Attorney, appearing for J. Walter Duncan, stated his concern regarding proposed Rule 6-107 (purchaser contract reports) and the burden placed on a working interest owner to stay current with what is filed at the Commission. Mr. Allison suggested that the operator should act as a clearinghouse. Mr. Allison also questioned whether an election to participate in one contract also means an election to participate in all contracts. Pat Moore, appearing for Sun, explained that an election to revenue share in one contract is a commitment to revenue share in all contracts valid at the time of election.

Pat Moore, Attorney, appearing for Sun, noted that the language contained in proposed Rule 6-101(C) (operator markets; election prior to production) — "Failure to respond shall be deemed acceptance of such offer" — is taken directly from House Bill No. 1221. However, she was concerned about potential conflict with general principles of contract law to the

effect that silence cannot ordinarily be taken as indicating consent. This was the reason for the additional requirement that a contract be signed. Thus, the additional requirement for a written contract.

David High, Attorney, appearing for various unnamed royalty owners, questioned how House Bill No. 1221 and the Commission's proposed rules interacted with 52 O.S. § 540. It was explained by Pat Moore that, where a revenue sharer is disbursing his own royalty, the sixty-day period is proposed for the exchange of information and because such revenue sharer is waiting for an accounting from the operator and a disbursement from him.

Charles F. Hughes, Jr., Vice President of Gas Supply, Oklahoma Natural Gas Company (ONG), testified in opposition to proposed Rule 6-107 (purchaser contract reports). Mr. Hughes expressed two concerns. First, the potential liability under anti-trust laws and, secondly, compliance with Oklahoma's common purchaser statute. Mr. Hughes stated the policy of ONG is that all interest owners in a well are tendered a contract on the most favorable terms offered to any other interest owner. However, sometimes there may be two different offers. For example, one offer may offer a price for the residue content of the gas plus a share of the liquids. Another offer would be of a price to be paid for the full wellhead stream. The interest owner may choose from either contract. Mr. Hughes testified that the cost of filing the information required by proposed Rule 6-107 would be exceedingly burdensome to his company and its retail ratepayers. Further, the information required to be filed would reveal to competitors confidential information. Mr. Hughes suggested eliminating proposed Rule 6-107 in its entirety or, in the alternative, shifting the burden to the operator. Mr. Hughes noted that House Bill No. 1221 was unnecessary if all purchasers, particularly interstate

pipelines, complied with Oklahoma's common purchaser statute. Mr. Hughes also testified that, in those instances where a party wishes to revenue share in another party's contract, the party wishing to revenue share must also proportionately share in the costs associated with making the connection. Mr. Hughes' Summary of Testimony was received as Exhibit No. 69.

Richard L. Hocker, Regulatory Affairs Advisor and Petroleum Engineer for Cities Service Oil and Gas Corporation, sponsored Exhibit No. 70 which was received into evidence. Exhibit No. 70 is an accounting manual for volumetric gas balancing under the proposed Rules. Using Exhibit No. 70, Mr. Hocker went through, in detail, a sample accounting procedure for a representative six month period.

Ben Singletary, Attorney, appearing for Texaco Inc., argued against retroactive application of the rules. Mr. Singletary relied on *Wickham v. Gulf Oil Corporation,* 623 P.2d 613 (Okl. 1981), arguing that the rule of statutory construction announced in *Wickham* is determinative. *Wickham* addressed the question of whether the statutory "Pugh" clause, 52 O.S. § 87.1(b), enacted May 27, 1977, should be applied retroactively to pre-existing oil and gas leases. The Court concluded that the statute there concerned should not be given retroactive effect.

Mr. Singletary also relied on the recently-decided *The Hughes Group v. Perry A. Morgan et al.*, No. 82-C-995-BT, Slip op. (N.D. Okl. April 25, 1983), in his arguments against retroactive application of House Bill No. 1221. An issue in *The Hughes Group* was whether the Surface Damages Act, 52 O.S. Supp. 1982, §§ 318.2 et seq., effective July 1, 1982, applied to leases entered into prior to the effective date of the Act. The Court found the Legislature did not intend that statute to have

retroactive effect. The *Hughes Group* order was received as Exhibit No. 71.

In addition to the testimony given and arguments made at the hearing, the Commission considered all wirtten comments submitted. Although the majority of the comments specifically addressed the problems of retroactivity, elections to have an operator seek a market, and numerous accounting problems, a number of parties pointed out the problems they have had with shut-in gas wells in which other working interest owners have gas contracts but they do not. These owners were faced with waiting until the depletion of the well before they could cash balance. In some cases, however, this held the countervailing risk of insolvency of the operators or, for various reasons, an inability to immediately cash balance on the part of the over-produced party.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Cause is brought pursuant to legislative authority contained in Section 547 of Title 52 which empowers this Commission "to promulgate rules and regulations by which the purpose of this act shall be administered, including the power to establish and enforce penalties for violations thereof."

2. Notice by publication in every county of Oklahoma of the Second Notice of Proposed Rulemaking, the time and place of the hearing thereon and the purpose of said hearing, has been given in all respects as required by law and all interested parties were fully heard therein. The Commission has jurisdiction of the subject matter embraced in the Second Notice and of the parties interested therein, and jurisdiction to issue and promulgate the hereinafter prescribed order.

3. The Commission finds that each and every owner of production in each well located in Oklahoma should have a

reasonable opportunity to timely receive his equitable share of gas. This finding is consistent with this Commission's statutorily mandated duties to protect correlative rights and to prevent waste.

4. The Commission finds that it is the legislative intent as set forth in 52 O.S. Supp. 1983, §§ 541 et seq., that each owner in a well owns an undivided interest, in a percentage equal to his interest in the whole, in each molecule of gas that is produced from a well bore in which he owns an interest. Therefore, the revenues received from any contracts existing on May 3, 1983, or which may later be entered into, must be shared ratably with non-contracted parties. This is without regard to whether a non-contracted party elects to have the operator seek a market for the non-contracted party's gas. 52 O.S. Supp. 1983, § 544 (Section 4 of Enrolled House Bill No. 1221).

5. The Commission finds that the Oklahoma Legislature, in enacting 52 O.S. Supp. 1983, §§ 541 et seq., has reasonably exercised a proper police power of the State to protect the general health, safety and welfare through the means of a limited interference with individual property rights and has done so in a manner wholly consistent with Article I, § 10 of the U.S. Constitution's and Article II, § 15 of the Oklahoma Constitution's general strictures against government abrogation of contracts between private parties. *Energy Reserves Group, Inc. v. Kansas Power & Light Co., —U.S.—, 74 L.Ed.2d 569 (1983). Union Oil Company of California v. Brown,* 641 P.2d 1106, 1109 (Okl. 1981); *Patterson v. Stanolind Oil & Gas Co.,* 77 P.2d 83 (Okl. 1938), app. dis. 305 U.S. 376, 69 S.Ct. 259, 83 L.Ed. 231 (1939).

The Commission also relies on *Energy Reserves Group, Inc. supra,* in which the U.S. Supreme Court stated that "... [a]lthough the language of the Contract Clause [con-

tained in Article I, § 10 of the U.S. Constitution] is facially absolute, its prohibition must be accommodated to the inherent police power of the State 'to safeguard the vital interests of its people.' *Home Bldg. & Loan Assn. v. Blaisdell,* 290 U.S. 398,434 (1934)." The Court, in *Energy Reserves,* stated that the threshold question was "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." *Allied Structural Steel Co. v. Spannaus,* 438 U.S. 234, 244 (1978). This Commission finds that even though the provisions of 52 O.S. Supp. 1983, §§ 541 et seq., apply to contracts entered into prior to May 3, 1983, it does not impermissibly impair the obligation of contracts (U.S. Con. Art. I, §10; Okl. Con. Art. II, § 15).

Although the Commission initially questioned whether this legislation violated the Contract Clause, *Apache Corp. et al. v. Corp. Comm.,* No 60435, Brief of Respondent, after further review of the facts and the law, it is this Commission's conclusion that 52 O.S. Supp. 1983, §§ 541 et seq., as interpreted by these Rules, does not violate the Contract Clause of either the State or Federal Constitutions. Regardless, the Oklahoma Supreme Court declined to rule on the legislation and, although the constitutionality of 52 O.S. Supp. 1983, §§ 541 et seq. is being challenged in Federal District Court, *Kirby Exploration Company v. Fuller Petroleum et al.,* CIV-83-183OT (W.D. Okl. filed July 29, 1983), this Commission's obligation is to aid in the enforcement of the statute until instructed otherwise by the Legislature or the judiciary.

6. The Commission finds that the cases of *Wickham v. Gulf Oil Corp.,* 623 P.2d 613 (Okl. 1981), and *The Hughes Group v. Perry A. Morgan et al.,* No. 82-C-995-BT, Slip Op. (N.D. Okl. April 25, 1983), are distinguishable from the facts and circumstances presented herein and are, therefore, not controlling. Rather, at the time of the execution of every contract, the right

of the Legislature to act is a part of the existing law and, therefore, becomes in contemplation of law a part of that contract. *Oklahoma Natural Gas Company v. Long,* 406 P.2d 499, 503 (Okl. 1965). This is particularly true in a heavily regulated industry such as the oil and natural gas industry. This Commission relies on and is persuaded by *Patterson v. Stanolind Oil and Gas Co.,* 182 Okl. 155, 77 P.2d 83, 89 (1938), in which the Oklahoma Supreme Court stated:

> . . . it is well established that the police power of the state extends to protecting the correlative rights of owners in a common source of oil and gas supply and this power may be lawfully exercised by regulating the drilling of wells into said common source of supply and distributing the production thereof among the owners of mineral rights in land overlying said common source of supply. As to the charge that such regulations deprive the individual of property without compensation or due process of law, the defendants very convincingly demonstrate that the enforcement of chapter 59, art. 1, S.L. 1935, 52 Okl. St. Ann. §§ 85-87, 136-138, though it may reduce the plaintiff's immediate or current receipts from the production of the well in question, yet, in protecting the common source of supply from sporadic drilling . . . will tend to prolong his receipts so that their total or his ultimate benefit from said pool will be greater than it would be if the number of wells drilled into the pool was not limited. However, be that as it may, since the plaintiff's mineral deed did not grant him the benefit, use, or possession of any definite amount of minerals nor the right to reduce any certain amount of minerals to possession, but only gave him an ownership in the oil and gas that might be captured or reduced to possession, and since the right to capture from a common source of supply may be limited or restricted by the state, it may be said that such a grant can confer no right to title in property that is not already subject

to being limited, restricted, or modified by the state's said power. *The extent of private contract in such matters being at all times subject to limitation by the inherent police power of the state, any muniment of title is impotent to assume or to convey any property right in the common source of supply superior to or entirely independent of said sovereign power. Thus, in our opinion, the lawful exercise of the state's power to protect the correlative rights of owners in a common source of supply of oil and gas is not a proper subject for the invocation of the provisions of either the State or Federal Constitution which prohibit the taking of property without just compensation or without due process of law and forbid the impairment of contract obligations.* As we view it, the property here involved has not been taken or confiscated: its use has merely been restricted and qualified. This does not violate the due process clause of either Constitution. And this would be true even though the plaintiff were able to prove a distinct loss to himself through the operation of the statutes putting said police power into force and effect." (Emphasis Supplied.)

7. The Commission finds that it is the legislative intent, as set forth in 52 O.S. Supp. 1983, §§ 541 et seq., to restore all underproduced parties to positions which they would have occupied had an imbalance not occurred with respect to wells in which contracts were in effect on and after May 3, 1983. 52 O.S. Supp. 1983, § 544 (Section 4 of Enrolled House Bill No. 1221). Historically, three methods have been employed to restore parties to balance:

"1. *Balancing in kind. A balancing in volumes.* In effect the underproduced party takes a certain percentage of the over-produced party's gas until the 'imbalance' has been 'made up.'

2. *Periodic cash balancing.* Here, the underproduced party receives cash, and the well is immediately brought into balance.

3. *Cash balancing upon reservior depletion.* The parties endeavor to maintain a reservoir balance during the life of the well, and on depletion, the overproduced party accounts to the underproduced party in cash."

5 Kuntz, Oil and Gas, § 77.3, p. 408 (1978)

United Petroleum Exploration, Inc. v. Premier Resources, Ltd., 511 F. Supp. 127 (W.D. Okl. 1980); *Beren v. Harper Oil Company*, 546 P.2d 1356 (Okl. App. 1975). By the passage of 52 O.S. Supp. 1983, §§ 541 et seq., the Legislature has clearly indicated its intent that from May 3, 1983, forward, all parties, whether contracted or non-contracted, shall share ratably in revenues received from production. Under 52 O.S. Supp. 1983, §§ 541 et seq., contracts entered into prior to May 3, 1983, are subject to the provisions of the Act but not the gas sold prior to May 3, 1983, under those contracts.

8. The Commission finds that the language contained in proposed Rule 6-100(A) (general provisions) is inadequate to clearly set forth the effect under these Rules of joint operating agreements, gas balancing agreements and other written agreements; therefore, clarifying language has been added to the Rules.

9. The Commission finds that, to avoid any misunderstanding as to the term "interest owner" in proposed Rule 6-100(B)(1) (general provisions), the definition must be and has been modified.

10. The Commission finds that the provisions of proposed Rule 6-107 (purchaser contract reports) would be burdensome to purchasers, contrary to the provisions of 52 O.S. Supp. 1983,

§§ 541 et seq. and, lastly, would place a burden on this Commission's resources in that neither staff nor funding is available to adequately serve as a clearinghouse for the great amount of information required to be filed under the proposed Rule. Therefore, the Commission adopts language which places the burden of reporting on the operator and those who are interest owners in the well.

11. The Commission finds that Phillips' suggested change in the language of proposed Rule 6-104(G) (Rule 6-104(f) herein) (gas statements of production) is of merit and necessary to prevent an underproduced party from recouping at the time of well depletion at the latest, highest price. Such underproduced interest owner should be held to the price in effect at the time the respective overproduction occurred. Therefore, the Commission adopts Phillips' suggested language.

12. The Commission finds that Sun's suggestion as to proposed Rule 6-106(A) (Rule 6-106(A) herein) (special circumstances; parties selling under a joint operating agreement) concerning non-contracted parties who acquiesce in the sale of their share of gas is of merit and, therefore, has inserted clarifying language into the Rule.

13. The Commission finds that, in order to clarify the relief which may be requested under these Rules, and the procedure which is to be followed, it is necessary to promulgate Rule 6-109 herein (commencement of an action) in order to apprise all parties aggrieved under these Rules of the actions which are necessary to commence an action before the Commission for enforcement of these Rules.

14. The Commission finds that concern was expressed at the hearing and in the written comments regarding expenses which are incurred by a contracted party in obtaining its own contract or a similarly favorable contract for some other party. The Commission found merit in the language proposed by

Exxon Corporation (filing of October 31, 1983). The Commission hereby adopts such suggestion, with some modifications in language, finding such language to be equitable and consistent with the intent of Section 543 of Title 52 in that a non-contracted party who is sharing revenues should reimburse the contracted parties for his portion of the costs and expenses incurred in producing and marketing (including contracting) the gas.

15. The Commission finds that although very little testimony was received regarding the amount of the administrative expense found in Rule 6-108, that the amount of one percent of the amount of revenue due and owing and in no event less than Five Dollars is reasonable. However, the Commission shall monitor whether this amount is sufficient or insufficient and should the need arise will commence another rulemaking to address any problems.

16. The Commission finds that the authority to promulgate the Rules contained herein is also derived from its statutorily mandated duty to protect correlative rights. Such mandated duty constitutes a separate and distinct source of authority for the issuance of these Rules, especially as they apply to future contracts, and permits these Rules to stand independently of any rulemaking authority conferred under the provisions of 52 O.S. Supp. 1983, §§ 541 et seq.

17. The Commission finds that all of the Final Rules adopted by this Order are within the ambit and scope of the public notice given by the Second Notice of Proposed Rulemaking in this proceeding and that all interested parties have had an opportunity to comment on all modifications herein made to the proposed rules as proposed in the Second Notice or raised in hearing.

ORDER

Therefore, the Oklahoma Corporation Commission promulgates the following Final Rules to be designated OCC-OGR Rules 6-100 through 6-113:

Rule 6-100. General Provisions

A. All interest owners in a well producing natural gas or casinghead gas shall be afforded an equal opportunity to extract their fair share of gas and to sell said gas and to be paid in proportion to their interest therein. In the event any interest owner in such a well is a party to a joint operating agreement, gas balancing agreement and/or any other written agreement, then to the extent that the provisions of such agreement or agreements expressly provide for the taking, sharing or gas balancing of gas produced from such well in a manner other than as set forth in these Rules, then such provisions shall bind that interest owner who is a party to such agreement or agreements as between the parties to the exclusion of the marketing, revenue sharing and gas balancing provisions provided hereunder.

B. As used in Rule 6-100 through Rule 6-113:

1. "Interest owner" is a working interest owner or any person in a well having the right to produce or separately dispose of his gas;

2. "Contracted party" is any interest owner in an oil or gas well who is a party to a contract for the sale of gas produced from that oil or gas well;

3. "Non-contracted party" is any interest owner in an oil or gas well who does not have a gas contract for his share of gas production and who has not entered into any other agreement as provided above that governs the taking or

sharing of gas and, therefore, is subject to the provisions of these Rules.

Rule 6-101. Operator Markets-Revenue Sharing in Contract Entered into on or After Effective Date of Rules

A. In the event that a contract has been entered into on or after the effective date of these Rules for production from a well capable of producing natural gas or casinghead gas, the operator of the well, prior to the date of first production, shall notify each interest owner in the well and shall request that each owner notify the operator, within thirty (30) days, of:

1. The specific percentage of said owner's interest in the well;

2. Whether said owner has a gas contract covering such interest;

3. If the owner is non-contracted, does the owner elect to have the operator attempt to market the non-contracted party's share of the gas, or a portion thereof, in the well. If the owner fails to notify the operator within thirty (30) days, the operator is relieved of any further obligation to market the party's gas.

4. Date of the execution of the base contract and any amendments thereto;

5. The identity of the purchaser in such instance;

6. The name and address to which information should be sent under these Rules;

7. Information as to all transfers of ownership which may have been made (name of transferee and specific percentage interest conveyed); and

8. The existence and identity of those, if any, who have the right to take in kind.

B. Failure to respond to the operator within the thirty-day period shall be deemed an election not to have the operator market such owner's share of the gas production, and the operator shall have no further obligation to market such share. Upon an election to have the operator market a non-contracted party's share of the gas, the operator shall seek to market same under terms and conditions no less favorable than those, if any, received by the operator. The obligation to market such share shall be a continuing obligation; provided however, the owner may rescind such election in writing at any time following an initial one-hundred-twenty-day period during which the operator is seeking a market. During any period when the operator is attempting to market the non-contracted party's share of gas, such non-contracted party shall also be sharing ratably to the extent of his interest in the revenue from the sale of each contracted party's production.

C. In the event the operator secures a bona fide offer to purchase, written notice of the essential terms of the offer shall be given to each non-contracted party who has elected to have the operator market his share of the gas. Each non-contracted party shall then have thirty (30) days to accept or reject such offer in writing. Failure to respond shall be deemed an acceptance of such offer. Additionally, a non-contracted party who elects to accept such offer shall thereupon enter within thirty (30) days thereafter into the contract offered by the gas purchaser. Failure to enter into the contract shall relieve the operator from any further obligation to market such non-contracted party's share of gas. Such non-contracted party who accepts such offer shall thereupon become subject to the provisions of paragraph D of this Rule.

D. Within thirty (30) days of the receipt of the information required under paragraph A of this Rule, the operator shall notify each contracted party in the well, based on the informa-

tion received under paragraph A of this Rule, of all non-contracted parties. Thereafter, each contracted party shall distribute revenues, pursuant to the provisions of 52 O.S. § 540, to such non-contracted parties to the extent of that party's interest in the revenue from the sale of each contracted party's gas production sold.

E. Each non-contracted party's share of revenue under this Rule shall be calculated from each contracted party's produced volume less that volume (including make up gas) attributable to such contracted party's interest. The revenue sharing required herein shall entail sharing in all existing and future gas contracts for gas produced from the subject well. Unless otherwise agreed to in writing, in addition to the administrative expense provided in Rule 6-108, such contracted party shall be entitled to recover from the non-contracted party, by deduction or otherwise, a proportionate share of all costs and expenses incurred in, and in connection with, the production and marketing of the gas, including those costs and expenses for making the gas marketable and delivering the gas to market.

F. Each contracted party whose revenues are shared by a non-contracted party hereunder shall maintain an account showing the volume of gas sold during each calendar month by the contracted party, the proceeds received from such sale, and the non-contracted party's share of such proceeds. Within sixty (60) days after the end of each calendar month, during which production is sold, the contracted party shall pay or cause to be paid to the non-contracted party its share of the proceeds. Upon written request by the non-contracted party, the contracted party shall furnish within thirty (30) days a written statement of accounts in support of such payment.

G. A non-contracted party who revenue shares under the provisions of this Rule shall be deemed to be sharing revenues

from the date of first production under the gas contract, until the earlier of the following occurs:

1. The final expiration of the last contract covering the subject well; or

2. A gas contract is separately obtained by him for his share of the gas.

H. In the event a non-contracted party who shares revenues hereunder subsequently enters into his own contract for the sale of gas, the effective date of such contract shall be no earlier than the first day of the second calendar month following the date on which written notice thereof is given by the non-contracted party to the contracted parties. In the event of an assignment of the non-contracted party's interest to a third party, the third party shall be deemed to be a party to the revenue sharing arrangement.

Rule 6-102. Revenue Sharing in Contract Entered Into Prior to May 3, 1983

A. In the case of a contract entered into prior to May 3, 1983, for production from a well producing natural gas or casinghead gas, each contracted party shall maintain an account of the volume of gas sold or disposed of prior to May 3, 1983, which would have been attributed to each non-contracted party's interest. An account of the price at which these volumes were sold shall also be maintained in the event a cash settlement is necessary for final balancing upon depletion of the well. In no event shall a non-contracted party be entitled to a price for said volumes greater than that price actually received by the contracted party who sold such gas.

B. Within thirty (30) days of the effective date of these Rules, the operator of the well shall notify each interest owner

in the well and shall request that each interest owner notify the operator, within thirty (30) days, of:

1. The specific percentage of said owner's interest in the well;

2. Whether said owner has a gas contract covering such interest;

3. Date of the execution of the base contract and any amendments thereto;

4. The identity of the purchaser in such instance;

5. The name and address to which information should be sent under these Rules;

6. Information as to all transfers of ownership which may have been made (name of transferee and specific percentage interest conveyed); and

7. The existence and identity of those, if any, who have the right to take in kind.

C. Within thirty (30) days of the receipt of the information required under paragraph B of this Rule, the operator shall notify each contracted party in the well, based on the information received under paragraph B of this Rule, of all non-contracted parties. Thereafter, each contracted party shall distribute revenues, pursuant to the provisions of 52 O.S. § 540, to such non-contracted parties to the extent of such non-contracted party's interest in the revenue from the sale of each contracted party's gas production sold. Provided that, payment for production sold or otherwise disposed of from and including May 3, 1983, up to the effective date of these Rules shall be made by each contracted party to each non-contracted party by the following method:

1. Each contracted party shall calculate the volume of gas sold or disposed of and the price paid for such volume from and including May 3, 1983, to the effective date of these Rules;

2. From the calculations made under paragraph 1 herein, the contracted party shall calculate the amount of gas and revenue received thereunder which is attributable to each non-contracted party's interest; and

3. The amount of revenue due and owing to such non-contracted party, as calculated under paragraph 2 herein, shall be paid by the contracted party to each non-contracted party in equal monthly amounts over a period of the succeeding eight (8) months.

D. Each non-contracted party's share of revenue under this Rule shall be calculated from each contracted party's produced volume less that volume (including make up gas) attributable to such contracted party's interest. The revenue sharing required hereunder shall entail sharing in all existing and future gas contracts for gas produced from the subject well. Unless otherwise agreed to in writing, in addition to the administrative expense provided in Rule 6-108, such contracted party shall be entitled to recover from the non-contracted party, by deduction or otherwise, a proportionate share of all costs and expenses incurred in, and in connection with, the production and marketing of the gas, including those costs and expenses for making the gas marketable and delivering the gas to market.

E. Each contracted party whose revenues are shared by a non-contracted party hereunder shall maintain an account showing the volume of gas sold during each calendar month by the contracted party, the proceeds received from such sale, and each non-contracted party's share of such proceeds. Within

sixty (60) days after the end of each calendar month during which production is sold, the contracted party shall pay or cause to be paid to the non-contracted party his share of such proceeds. Upon written request by the non-contracted party, the contracted party shall furnish within thirty (30) days a written statement of accounts in support of such payment.

F. A non-contracted party who revenue shares under the provisions of this Rule shall be deemed to be sharing revenues from May 3, 1983, until the earlier of the following occurs:

1. The final expiration of the last contract covering the subject well, or

2. A gas contract is separately obtained by him for his share of the gas.

G. In the event a non-contracted party who shares revenues hereunder subsequently enters into his own contract for the sale of gas, the effective date of such contract shall be no earlier than the first day of the second calendar month following the date on which written notice thereof is given by the non-contracted party to the contracted parties. In the event of an assignment of the non-contracted party's interest to a third party, the third party shall be deemed to be a party to the revenue sharing arrangement.

Rule 6-103. Revenue Sharing in Contract Entered into on or after May 3, 1983, but Prior to Effective Date of Rules

A. In the event that a contract has been entered into on or after May 3, 1983, but prior to the effective date of these Rules, for production from a well capable of producing natural gas or casinghead gas, the operator of the well shall notify each interest owner in the well and shall request that each owner notify the operator, within thirty (30) days, of:

1. The specific percentage of said owner's interest in the well;

2. Whether said owner has a gas contract covering such interest;

3. If the owner is non-contracted, does the owner elect to have the operator attempt to market the non-contracted party's share of the gas, or a portion thereof, in the well. If the owner fails to notify the operator within thirty (30) days, the operator is relieved of any further obligation to market the party's gas.

4. Date of the execution of the base contract and any amendments thereto;

5. The identity of the purchaser in such instance;

6. The name and address to which information should be sent under these Rules;

7. Information as to all transfers of ownership which may have been made (name of transferee and specific percentage interest conveyed); and

8. The existence and identity of those, if any, who have the right to take in kind.

B. Failure to respond to the operator within the thirty-day period shall be deemed an election not to have the operator market such owner's share of the gas production, and the operator shall have no further obligation to market such share. Upon an election to have the operator market a non-contracted party's share of the gas, the operator shall seek to market same under terms and conditions no less favorable than those, if any, received by the operator. The obligation to market such share shall be a continuing obligation; provided, however, the owner may rescind such election in writing at any time following an

initial one-hundred-twenty-day period during which the operator is seeking a market. During any period when the operator is attempting to market the non-contracted party's share of gas, such non-contracted party shall also be sharing ratably to the extent of his interest in the revenue from the sale of each contracted party's production.

C. In the event the operator secures a bona fide offer to purchase, written notice of the essential terms of the offer shall be given to each non-contracted party who has elected to have the operator market his share of the gas. Each non-contracted party shall then have thirty (30) days to accept or reject such offer in writing. Failure to respond shall be deemed an acceptance of such offer. Additionally, a non-contracted party who elects to accept such offer shall thereupon enter within thirty (30) days thereafter into the contract offered by the gas purchaser. Failure to enter into the contract shall relieve the operator from any further obligation to market such non-contracted party's share of gas. Such non-contracted party who accepts such offer shall thereupon become subject to the provisions of paragraph D of this Rule.

D. Within thirty (30) days of the receipt of the information required under paragraph A of this Rule, the operator shall notify each contracted party in the well, based on the information received under paragraph A of this Rule, of all non-contracted parties. Thereafter, each contracted party shall distribute revenues, pursuant to the provisions of 52 O.S. § 540, to such non-contracted parties to the extent of such non-contracted party's interest in the revenue from the sale of each contracted party's gas production sold. Provided that, payment for production sold or otherwise disposed of from and including the date of first production up to the effective date of these Rules shall be made by each contracted party to each non-contracted party by the following method:

1. Each contracted party shall calculate the volume of gas sold or disposed of and the price paid for such volume from and including the date of first production to the effective date of these Rules;

2. From the calculations made under paragraph 1 herein, the contracted party shall calculate the amount of gas and revenue received thereunder which is attributed to each non-contracted party's interest; and

3. The amount of revenue due and owing to such non-contracted party, as calculated under paragraph 2 herein, shall be paid by the contracted party to each non-contracted party in equal monthly amounts over a period of time equal to the number of whole months from the date of first production to the effective date of these Rules.

E. Each non-contracted party's share of revenue under this Rule shall be calculated from each contracted party's produced volume less that volume (including make up gas) attributable to such contracted party's interest. The revenue sharing required hereunder shall entail sharing in all existing and future gas contracts for gas produced from the subject well. Unless otherwise agreed to in writing, in addition to the administrative expense provided in Rule 6-108, such contracted party shall be entitled to recover from the non-contracted party, by deduction or otherwise, a proportionate share of all costs and expenses incurred in, and in connection with, the production and marketing of the gas, including those costs and expenses for making the gas marketable and delivering the gas to market.

F. Each contracted party whose revenues are shared by a non-contracted party hereunder shall maintain an account showing the volume of gas sold during each calendar month by the contracted party, the proceeds received from such sale, and

the non-contracted party's share of such proceeds. Within sixty (60) days after the end of each calendar month, during which production is sold, the contracted party shall pay or cause to be paid to the non-contracted party his share of such proceeds. Upon written request by the non-contracted party, the contracted party shall furnish within thirty (30) days a written statement of accounts in support of such payment.

G. A non-contracted party who revenue shares under the provisions of this Rule shall be deemed to be sharing revenues from the date of first production under the gas contract, until the earlier of the following occurs:

1. The final expiration of the last contract covering the subject well; or

2. A gas contract is separately obtained by him for his share of the gas.

H. In the event a non-contracted party who shares revenues hereunder subsequently enters into his own contract for the sale of gas, the effective date of such contract shall be no earlier than the first day of the second calendar month following the date on which written notice thereof is given by the non-contracted party to the contracted parties. In the event of an assignment of the non-contracted party's interest to a third party, the third party shall be deemed to be a party to the revenue sharing arrangement.

Rule 6-104. Gas Statements of Production

A. On and after May 3, 1983, each interest owner who produces natural gas or casinghead gas and who separately sells or otherwise disposes of the gas shall maintain an accounting for all gas sold or otherwise disposed of by him, other than that used for lease purposes.

B. On or before the end of each calendar month, each interest owner in the well separately selling or otherwise disposing of produced gas, other than that used for lease purposes, shall furnish the well operator a statement showing the total volume of gas taken by that interest owner during the preceding month. He shall also notify the operator of the non-contracted parties who are to share in revenues, together with the effective date of such revenue-sharing. The operator shall then account to all interest owners for all volumes produced, and shall subsequently provide this accounting to each contracted party. The information included therein shall include the total volume produced from the well the preceding month, the volumes produced on behalf of each contracted party for said month, and the volumes attributable to each non-contracted party by each contracted party for revenue sharing.

C. In the event a contracted party's gas contract expires, and he subsequently revenue shares:

1. Any underproduction attributable to him shall be carried forward until such time as he enters into a new contract or until the well depletes; or

2. Any overproduction attributable to him shall be "balanced" to zero before he can participate in revenue sharing.

D. Each interest owner in the well separately selling or otherwise disposing of produced gas shall maintain a monthly account which shows the total volume of gas actually taken by his purchaser or disposed of by him and the proceeds received by him for the preceding month. Each contracted party shall also maintain an accounting of what each non-contracted party's attributable volume of production for the month under its contract actually was, based on the total production figures supplied to the contracted party by the operator. A statement showing such accounting of the volume and the cumulative

volume to date shall be furnished on or before the end of each calendar month to each non-contracted party who has provided the contracted party with a written request for such statement and the address to which it is to be sent.

E. Any party governed by the provisions of this Rule who ultimately enters into a contract to separately sell or dispose of his share of gas, shall not make any such contract initially effective until the first day of the second month following notice to all contracted parties. He shall thereafter be eliminated from subsequent accounting for his share of the gas to the well operator by such contracted parties. Instead, he shall then inform all contracted parties in the well that he is now a contracted party and he shall begin accounting to the well operator and to all non-contracted parties pursuant to Rule 6-101, 6-102 or 6-103. When the newly contracted party begins to take his share of gas, plus additional make-up gas to get into balance, in no event shall any other contracted party's share be reduced by more than twenty-five percent (25%).

F. For those wells which commenced production prior to May 3, 1983, when gas production permanently ceases from the well, then a final balancing for production had prior to May 3, 1983, shall be achieved through a cash balancing, without interest, among the parties, based on the net proceeds actually received by the contracted parties at the time the respective overproduction occurred, less payments made by contracted parties as described in Rule 6-108. If the interest of a non-contracted party who elected under the provisions of this Rule is assigned to another party during the life of the well, then upon written notification and proof of the assignments, each contracted party shall account to the assignee on the first day of the second month following such notice. Any imbalance credited to the assignor shall be the obligation of the assignee.

Rule 6-105. Expiration of a Gas Contract

A. A contracted party whose contract finally expires shall, as a newly non-contracted party, share revenues under Rule 6-101, Rule 6-102, or Rule 6-103, whichever is applicable. For the purpose of this Rule, the term "finally expired" shall be defined as the time when actual gas sales under the terms of the contract, including any roll-overs, permanently cease. Notice of the expiration of the contract shall be communicated in writing to the operator and to all the contracted parties. This notice shall include the date the gas contract expired. Each contracted party shall then account to such party sharing revenue, beginning from the first day of the month following said notice.

B. No obligation to account for such share of gas or the revenues attributable thereto on behalf of a newly non-contracted party shall exist until such time as notice is received.

C. Any liability resulting from errors in the revenue-sharing account attributable to the failure of a newly non-contracted party to fulfill the requirements of this Rule shall be borne solely by such newly non-contracted party.

Rule 6-106. Special Circumstances; Parties Selling Under a Joint Operating Agreement

A. A non-contracted party who has arranged to have the operator of a well market his share of the gas as a "sale under the operating agreement" shall for accounting purposes have his interest included in the accounting performed by the operator, including revenue sharing. A non-contracted party who has acquiesced in the sale of his share of the gas from a well by the operator, as evidenced by his acceptance of the proceeds for such share of the gas, shall be included within the provisions of this Rule.

B. In the event a non-contracted party terminates such marketing arrangement because he secures his own gas contract, he shall not make any such contract initially effective until the first day of the second month following notice to the operator.

C. In the event a non-contracted party terminates the "sale under the operating agreement" arrangement without securing his own gas contract, then he is subject to the provisions of Rule 6-105 just as if he were a newly non-contracted party.

Rule 6-107. Payments on Production

A. Each interest owner in a well shall, with respect to his share of production or revenues, be responsible for all production or severance taxes, excise taxes, royalties, overriding royalties, production payments and other such payments for which he is obligated by law, lease or contract, and nothing in Rules 6-100 through 6-113 shall be construed as affecting such obligations.

B. Nothing in this Rule shall prevent the interest owners in a well from entering into an agreement for the manner in which actual disbursement of the payments required hereinunder will be made and/or the party who will make such disbursements.

Rule 6-108. Administrative Expense

Each non-contracted party in a well who revenue shares under Rule 6-101, 6-102, or 6-103 shall be subject to a monthly administrative expense of one percent (1%) of that amount of revenue due and owing as payment for that month, and in no event less than Five Dollars ($5.00). Said expense shall be billed by the operator, or shall be withheld by the contracted party from the gas revenue due to the non-contracted party, unless a separate arrangement is agreed upon in writing by the parties subject hereto.

Rule 6-109. Commencement of an Action

Any interest owner aggrieved under the provisions of these Rules and 52 O.S. Supp. 1983, §§ 541 et seq., may seek relief in the District Courts of Oklahoma or before the Commission. An action before the Commission is commenced by filing an application in the Secretary's Office. Notice that an application has been filed shall be published by the applicant in a newspaper of general circulation in Oklahoma County and published in a newspaper of general circulation in the county in which the well is located. Notice shall be served by the applicant by regular mail upon each interest owner in the well and shall be given not less than fifteen (15) days prior to the date of the hearing.

Rule 6-110. Other Rights and Remedies

No provision of these Rules shall be construed or interpreted to eliminate or otherwise affect the rights and remedies available to any operator or other interest owner against any other interest owner who defaults or fails to pay his proportionate share of the well costs. Nothing in these Rules shall be construed to prevent any interest owner from receiving the price agreed upon by his gas contract, or to prevent any interest owner from taking his share of production in kind or separately disposing of his share of gas.

Rule 6-111. Oil and Other Minerals

These Rules shall not be applicable to, nor affect any rights to, crude oil.

Rule 6-112. Duties and Obligations

An operator or contracted party who undertakes any obligations hereunder shall have no liability for losses sustained or

liabilities incurred except such as may result from gross negligence or willful misconduct.

Rule 6-113. Severability

The provisions of these Rules are severable and if any part or provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of these Rules.

IT IS FURTHER ORDERED that the effective date of these Rules be January 1, 1984.

IT IS FURTHER ORDERED that the Oil and Gas Conservation Division is hereby authorized and directed to publish these Rules in its General Rules and Regulations of the Oil and Gas Conservation Division.

IT IS FINALLY ORDERED that the Office of General Counsel is hereby directed to transmit this Order to the State Librarian and Archivist and to the Secretary of State as required by 75 O.S. 1981, Section 251.

DONE AND PERFORMED this 21 day of December, 1983.

CORPORATION
COMMISSION
OF OKLAHOMA

HAMP BAKER
HAMP BAKER,
Chairman

NORMA EAGLETON
NORMA EAGLETON,
Vice-Chairman

JAMES B. TOWNSEND
JAMES B. TOWNSEND,
Commissioner

ATTEST:

BERDEE S. HOLT
BERDEE S. HOLT,
Secretary

ATTACHMENT A

Sam Hammons, the RAM Group, appeared for various independent oil and gas producers and royalty owners;

Stanley L. Cunningham, Attorney, appeared for Apache Corporation, Atlantic Richfield Company, Cities Service Oil and Gas Corporation, Devon Energy Corporation, Exxon Corporation, Getty Oil Company, Grace Petroleum Corporation, Inexco Oil Company, Kerr-McGee Corporation, Kirby Exploration Company, Mapco Production Company, Marathon Oil Company, Marshall Oil Corporation, Monsanto Oil Company, Mustang Production Company, Phillips Petroleum Company, Samedan Oil Corporation, Shell Oil Company, Sun Exploration and Production Company, Tenneco Oil Company, Texaco Inc., and El Paso Exploration Company;

E. A. Boydston appeared for Harper Oil Company;

R. Brent Blackstock, Attorney, appeared for InterNorth, Inc., and Northern Natural Gas Company;

William C. Liedtke, III, Attorney, appeared for Trigg Drilling Co., Inc.;

Frank D. Spiegelberg, Attorney, appeared for Apache Corporation;

M. A. Heim appeared for ANR Production Company;

John W. Mason, Robert Isaac and R. J. Starrak appeared for Amarex, Inc.;

Gary E. Baker and George F. Safi, Attorneys, appeared for Exxon Corporation;

David High, Attorney, appeared for various royalty owners;

M. Benjamin Singletary, Attorney, appeared for Texaco, Inc.;

Louis Morrison, III, and Paul E. Fulbright, Attorneys, appeared for Sabine Production Company;

Patricia A. Moore, Attorney, appeared for Sun Exploration and Production Company;

Neal A. Gerstandt and David T. Burleson, Attorneys, appeared for El Paso Exploration Company;

William E. Heimann and Johnny J. Akins, Attorneys, appeared for Kerr-McGee Corporation;

Jack P. Fite and Joseph C. Johnson, Attorneys, appeared for Conoco, Inc.;

Galen E. Ward, Gary P. Proctor, Shelley J. Himel, Jim Hamilton, and Stewart R. Werner, Attorneys, appeared for Phillips Petroleum Company;

Gerald H. Barnes, Attorney, appeared for Cities Service Oil and Gas Corporation;

Larry D. Killion appeared for Santa Fe Energy Company;

Bill Wohlford, Attorney, appeared for Donald C. Slawson, Oil Producer;

Charles R. Cleveland, Attorney, appeared for Warren Petroleum Company, a Division of Gulf Oil Corporation;

C. A. McKenzie, Attorney, appeared for Anderman/Smith Operating Company;

Tom Z. Wright, Attorney, appeared pro se;

Duncan W. Holt, Jr., Attorney, appeared for ARCO Oil and Gas Company, a Division of Atlantic Richfield Company;

Richard K. Books, Attorney, appeared for Tenneco Oil Company;

Max H. Lawrence, Attorney, appeared for Mobil Oil Corporation;

Curtis H. Long and Anita M. Enz, Attorneys, appeared for Oklahoma Natural Gas Company;

William J. Legg, Attorney, appeared for Michigan Wisconsin Pipe Line Company;

Richard F. Remmers, Attorney, appeared pro se and for various interested persons;

Thomas S. Jensen, Attorney, appeared for El Paso Natural Gas Company;

John C. Buckingham and James Allison, Attorneys, appeared for J. Walter Duncan, Jr.;

Tom Carroll appeared for Ennex, Inc.;

Russell K. Haskell, Attorney, appeared for Hamilton Brothers Oil Company;

Hugh D. Rice, Attorney, appeared for United Gas Pipe Line Company;

S. G. McLaury appeared for the Oklahoma Royalty Owners Association;

Joe Lawter appeared pro se;

William Christian, Attorney, appeared pro se;

Robert Stewart, Attorney, appeared for Oklahoma Gas & Electric Company;

Gordon Ryan, Attorney, appeared for May Petroleum, Inc.;

Gerald E. Weis, Assistant Attorney General, appeared for the State of Oklahoma;

David W. Taylor, Attorney, appeared for Universal Resources Corporation;

Senator Ray Giles appeared pro se;

A. E. Martin appeared pro se;

Stewart Oil & Gas Investments, Inc.;

Gretchen Hoover, Deputy General Counsel for General Law, appeared for the Commission.

FILED
SUPREME COURT
STATE OF OKLAHOMA

SEP 10 1986

JAMES W. PATTERSON
CLERK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Wednesday, September 10, 1986

The Clerk is Directed to Issue the Following Orders:

59,722 J.C. Kennedy v. Charles B. Chadwell.
Certiorari denied.
CONCUR: Simms, C.J., Hodges, Lavender, Wilson, Summers, JJ.
DISSENT: Hargrave, Opala, Kauger, JJ.
DISQUALIFIED: Doolin, V.C.J.

61,497 City of Purcell v. Southwest Energy Production Company, Inc.
Rehearing denied.

61,636 (consolidated with 61,652) Dennis Seal, Darlene Seal et al. v. The Corporation Commission of the State of Oklahoma.
Rehearing denied.
CONCUR: Simms, C.J., Doolin, V.C.J., Hodges, Opala, Wilson Kauger, Summers, JJ., Gray, S.J. (appointed in place of Lavender, J. who disqualified).
DISSENT: Hargrave, J.

61,732 Eddie Lee Hibbs and Darlene Hibbs v. Farmers Insurance Company.
Rehearing denied.

62,996 Harold W. Alexander v. Harry Morgensen and William Glenn Dobbs a/k/a Bill Dobbs.
Certiorari denied.
CONCUR: Simms, C.J., Doolin, V.C.J., Hodges, Lavender, Hargrave, Wilson, Summers, JJ.
DISSENT: Opala,
Kauger,
JJ.

63,525 In the Matter of the Death of Paul E. Adkins. Betty Adkins v. Oklahoma Restaurant Association and Fireman's Fund Insurance Company.
Certiorari denied.
CONCUR: Simms, C.J., Doolin, V.C.J., Hodges, Lavender, Summers, JJ.
DISSENT: Hargrave, Wilson, Kauger, JJ.
DISQUALIFIED: Opala, J.

64,032 Jack Speed, an individual and Cypress Properties, Inc. etc. v. Sunrise Exploration, Inc. etc. et al.
Certiorari denied.

64,334 Albert Smith v. Ron Champion, Warden et al.
Certiorari denied
CONCUR: Simms, C.J., Doolin, V.C.J., Hodges, Lavender, Hargrave, Wilson, JJ.
DISSENT: Opala, Summers, JJ.
DISQUALIFIED : Kauger, J.

64,413 Kimbel Trucking Company, Inc. v. Fireman's Fund Insurance Company.
Certiorari denied.
CONCUR: Simms, C.J., Doolin, V.C.J., Lavender, Hargrave, Kauger, Summers, JJ.
DISSENT: Hodges, Opala, Wilson, JJ.

64,865 Crow Lippe #2 etc. v. City of Edmond et al. and Joseph D. Lica et al. (intervenors)
Rehearing denied.
CONCUR: Simms, C.J., Hodges, Hargrave, Opala, Wilson, Summers, JJ.
NOT PARTICIPATING: Doolin, V.C.J., Kauger, J.

ROBERT SIMMS
Chief Justice

D-1

FILED
SUPREME COURT
STATE OF OKLAHOMA

NOV 26 1986

JAMES W. PATTERSON
CLERK

IN THE SUPREME COURT
OF THE STATE OF OKLAHOMA

DENNIS E. SEAL, et al., *Appellants,* v. THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, *Appellee,* and AMERADA HESS CORPORATION, et al., *Appellants,* v. THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA, *Appellee.*	No. 61,636 (Surviving number) (Consolidated with No. 61,652)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Amerada Hess Corporation, et al.* certain of the appellants above, hereby appeal to the

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* Amerada Hess Corporation, Amoco Production Company, Apache Corporation, Atlantic Richfield Company, Cities Service Oil and Gas Corporation, Devon Energy Corporation, Exxon Corporation, Inexco Oil Company, Kirby Exploration Company, Marathon Oil Company, Meridian Oil Company (formerly El Paso Natural Gas Company), Mustang Production Company, Samedan Oil Company, Sun Exploration and Production Company, and Tenneco Oil Company.

Supreme Court of the United States from the final judgment of the Supreme Court of the State of Oklahoma affirming in part and reversing in part Order No. 250466 of the Corporation Commission of the State of Oklahoma concerning the constitutionality of 52 Okla. Stat. § 541-547, entered in this action on June 17, 1986, with rehearing denied on September 10, 1986.

This appeal is taken pursuant to 28 U.S.C. § 1257(2).

GARY W. CATRON
Stanley L. Cunningham, OBA #2103
Philip D. Hart, OBA #3942
Gary W. Catron, OBA #1570
Tenth Floor, Two Leadership Square
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405/235-9621

Attorneys for Appellant
Amerada Hess Corporation, et al.

PROOF OF SERVICE

I, Stanley L. Cunningham, certify that on this 26th day of November, 1986, a true and correct copy of the above and foregoing Notice of appeal to the United States Supreme Court has been deposited in the United States Mail, first-class postage prepaid, addressed to the following:

Oklahoma Corporation Commission
Jim Thorpe Building
Oklahoma City, Oklahoma 73105

The Honorable Michael Turpen
Attorney General
State Capitol Building
Oklahoma City, Oklahoma 73105

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Gary W. Catron

52 Okla. Stat. §§ 541-547

PAYMENT OF OIL AND GAS PROCEEDS

§ 541. Purpose and intent of act

It is the purpose and intent of this act to protect the rights and correlative rights of all interest owners of natural gas wells and wells producing casinghead gas and to afford all such owners an equal opportunity to extract their fair share of gas and to sell and be paid in proportion to their interest therein. It is further the intent of this act to protect such owners against discrimination in purchases in favor of one owner as against another.

Added by Laws 1983, c. 77, § 1, emerg. eff. May 3, 1983. Section 8 of Laws 1983, c. 77 provides for severability.

Title of Act

An Act relating to oil and gas; stating purpose and intent; requiring owners within well producing natural gas and casinghead gas to share ratably in revenues; excluding extracted gas liquids from provisions of act; providing election for owners in well to require operator to attempt to market owner's ratable share of production; allowing existing rights and remedies; allowing owners without contract to share in revenue from contracted production; requiring certain owners to account to other owners of a well; requiring proper distribution of revenues; clarifying scope of act; empowering corporation commission to promulgate rules, regulations and to establish and enforce penalties; verifying existing remedies and permitting treble damages for violation of act; providing for codification; providing severability; and declaring an emergency. Laws 1933, c. 77.

§ 542. Ratable sharing of revenues from sale of production — Owner's election to require operator to attempt to market owner's ratable share of production — Contract price — Other rights and remedies.

A. Whenever a well producing natural gas or casinghead gas is placed into production, all owners within such well, including, but not limited to, all working interests, any interested parties having a right to produce, overriding royalty, royalty and mineral interest owners in the unit area under the well, shall be entitled to share ratably in the revenues from the sale of production from the well as set forth in the provisions of this act. This act shall not apply to the natural gas liquids extracted as a result of mechanical processing of the natural gas stream for the removal of liquid components of the methane.

B. Prior to the date of first production, the operator of the unit area shall offer by written notice to each owner of the well having the right to sell an election whereby the operator shall seek to market that owner's ratable share of gas production, or a portion thereof as designated by the owner. Each owner shall have thirty (30) days from the receipt of the notice of the offer to elect in writing to have the operator attempt to market his share of gas production. Upon receipt of these elections, the operator shall seek to timely and competitively market such owners' share of the production at the best price and terms available in the area and in no event upon a price or terms less favorable than that received by the operator. Upon receipt of written notice of the terms of a bona fide offer to puchase, each owner electing to have the operator market his share of gas production shall have thirty (30) days within which to reject the same. Failure by any owner to reject the offer shall be deemed acceptance of the offer. If the operator has not secured a written bona fide offer to purchase within one hundred

twenty (120) days of an owner's election, that owner may rescind such election in writing.

C. If an owner in a well does not elect to obligate the operator as provided in subsection B of this section, then that owner shall not be obligated to deliver his ratable share for sale nor shall the operator be obligated to market such share.

D. Nothing in this act shall be construed to prevent any owner or owners form receiving the price agreed upon by contract or to prevent any owner or owners from taking their share of production in kind or separately disposing of their share. This act shall not be construed to eliminate or otherwise affect the rights and remedies available to any operator or any other working interest owner against any working interest owners, including operators, who either default or fail to pay their proportionate share of the well costs.

Added by Laws 1983, c. 77, § 2, emerg. eff. May 3, 1983.

§ 543. Owners without contract to share in revenue from contracted production

A. For wells producing or capable of producing natural gas or casinghead gas on and after the effective date of this act, in the event that one or more owners in a well receives a contract for the sale of only their portion of the gas production from the well to the exclusion of other owners in the well, all owners having no contract shall be entitled to share ratably in the revenue from the sale of each contract's production to the extent of their net revenue interest, except for any owner who elects or has elected in writing not to so sell. This act shall not be construed to prevent any owner from receiving the price agreed upon by contract.

B. Each owner receiving a contract to sell as described in subsection A of this section shall send written notice of the terms of the contract to all other net revenue interest owners

not having an existing contract for the purchase of their share of the gas production. Said owners shall have thirty (30) days from the receipt of the notice of the terms of the contract to elect in writing not to deliver their ratable share of gas production for sale. Failure by any owner to give said written notice shall be deemed acceptance by that owner of the terms of the contract and said owner shall deliver his ratable share of production for sale.

Added by Laws 1983, c. 77, § 3, emerg. eff. May 3, 1983.

§ 544. Amount of gas produced daily — Ownership — Benefits — Accounting for disposition — Sharing of revenues

On and after the effective date of this act, an owner of a well producing natural gas or casinghead gas may produce daily from the well that amount of gas which may be lawfully produced thereform. The amount of gas produced daily, irrespective of the owner producing, belongs to, is owned by, and shall inure to the benefit of each owner in the well in proportion to each owner's interest in the well. Each owner who produces natural gas or casinghead gas and who separately sells or otherwise disposes of the gas must account to each other owner in the well not selling or otherwise disposing of gas from the well for that owner's part of the gas so disposed of or sold. In addition, each selling or disposing owner must compensate each owner not selling or disposing of gas from the well for that owner's proportionate part of the gas disposed of or sold.

Added by Laws 1983, c. 77, § 4, emerg. eff. May 3, 1983.

§ 545. Distribution of revenues from sale of production

Proper distribution of revenues from the sale of production from the well shall be made pursuant to the provisions of Section 540 of Title 52 of the Oklahoma Statutes. If any owner receives revenues directly from the purchaser within which other owners are entitled to share ratably, the owner receiving

such revenues shall forward the same to the party responsible for distribution pursuant to the provisions of Section 540 of Title 52 of the Oklahoma Statutes.

Added by Laws 1983, c. 77, § 5, emerg. eff. May 3, 1983.

§ 546. Construction and application of act

Nothing in this act shall be construed as setting the price, terms or conditions under which a purchaser takes the production of a well or setting any restrictions, limitations, floor or ceiling on the price to be paid for such production, nor shall anything in this act require any purchaser to connect any well that such purchaser is not already obligated to connect and nothing contained in this section shall be construed as altering or changing the definition of the terms common purchaser and common carrier as defined by law.

§ 547. Corporation Commission empowered to promulgate rules and regulations — Judicial remedies

The Corporation Commission is herein empowered to promulgate rules and regulations by which the purpose of this act shall be administered, including the power to establish and enforce penalties for violations thereof. Such power shall supplement the existing authority of the Corporation Commission to provide for a ratable taking of gas to protect the correlative rights of those entitled to take from a common reservoir or common source of supply, including the exercising of the authority to enforce balancing in kind. Such power shall not preclude the remedies available through the district courts as provided by existing law nor preclude the right, herewith granted, of any owner who is injured in business or property by any other owner in the well by reason of any action in violation of the provisions of this act to sue in the courts of this state and to recover threefold the damages so sustained, the costs of the suit, and reasonable attorneys fees to be fixed by the court.

Added by Laws 1983, c. 77, § 7, emerg. eff. May 3, 1983.

28 U.S.C. § 3331

§ 3331. Elimination of price controls for certain natural gas sales

(a) *General rule.* — Subject to the reimposition of price controls as provided in section 3332 of this title, the provisions of part A of this subchapter respecting the maximum lawful price for the first sale of each of the following categories of natural gas shall, except as provided in subsections (d) and (e) of this section, cease to apply effective January 1, 1985:

(1) *New natural gas.* — New natural gas (as defined in section 3312(c) of this title).

(2) *New, onshore production wells.* — Natural gas produced from any new, onshore production well (as defined in section 3313(c) of this title), if such natural gas —

(A) was not committed or dedicated to interstate commerce on April 20, 1977; and

(B) is produced from a completion location which is located at a depth of more than 5,000 feet.

(3) *Intrastate contracts in excess of $1.00.* — Natural gas sold under an existing contract, any successor to an existing contract, or any rollover contract, if —

(A) such natural gas was not committed or dedicated to interstate commerce on November 8, 1978; and

(B) the price paid for the last deliveries of such natural gas occurring on December 31, 1984, or, if no deliveries occurred on such date, the price would have been paid had deliveries occurred on such date is higher than $1.00 per million Btu's.

(b) *High-cost natural gas.* — Effective beginning on the effective date of the incremental pricing rule required under section 3341 of this title, the provisions of part A of this subchapter respecting the maximum lawful price for the first sale of natural gas shall cease to apply to the first sale of high-cost natural gas which is described in section 3317(c)(1), (2), (3), or (4) of this title.

(c) *Natural gas produced from 5,000 or less.* — Effective beginning July 1, 1987, or, if later, the date of expiration of any price controls reimposed under section 3332 of this title, the provisions of part A of this subchapter respecting the maximum lawful price for any first sale of natural gas shall, except as provided in subsection (d) of this section, cease to apply to any first sale of natural gas produced from any new, onshore production well (as defined in section 3313(c) of this title), if such natural gas —

(1) was not committed or dedicated to interstate commerce on April 20, 1977; and

(2) is produced from a completion location which is located at a depth of 5,000 feet or less.

(d) *Exclusion of certain Alaska natural gas.* — The provisions of subsections (a) and (c) of this section shall not apply to any natural gas produced from the Prudhoe Bay Unit of Alaska and transported through the natural gas transportation system approved under the Alaska Natural Gas Transportation Act of 1976.

(e) *Limitation on indefinite price escalators.* — Natural gas which is not subject to maximum lawful prices under part A of this subchapter solely by reason of subsection (a)(3) of this section and which is sold under any existing contract or successor to an existing contract at a price established under an indefinite price escalator clause (as defined in section 3315(b)(3)(B) of this title) shall be subject to the provisions of section 3315(b)(3) of this title.

APPENDIX G

Parent Companies, Subsidiaries (except wholly owned) and Affiliates of Corporate Appellants

Amoco Production Company

Parent — Amoco Corporation

Affiliates:

Amoco Company

Amoco Credit Corporation

Analog Devices Inc.

Cetus Corporation

Cyprus Mines Corporation

Apache Corporation

Subsidiaries:

Apache Income Corporation

Apache International Finance, N.V.

Apache Programs, Inc.

Earlibest Orange Association, Inc.

Midwest Walnut Company of Iowa

S & J Ranch, Inc.

Clovis Citrus Association

T.M. Duche Nut Company, Inc.

Ucross Land Company

Apache Canadian Petroleum Limited

Apache Transmission Corporation — Texas

Apache Marketing Inc.

Apache Transmission Corporation

Paradise Ranch Company

Affiliates:

Apache Petroleum Company

Apache Oil and Gas Program 1986-I

Apache Oil and Gas Program 1986-II

Apache Oil and Gas Program 1985-I

Apache Oil and Gas Program 1985-II

Apache Oil and Gas Program 1984

Apache Petroleum Partnership 1983-III, Ltd.

Apache Petroleum Partnership 1983-II, Ltd.

Apache Petroleum Partnership 1983-I, Ltd.

Apache Petroleum Partnership 1982-III, General

Apache Petroleum Partnership 1982-II, Ltd.

Apache Petroleum Partnership 1982-I, Ltd.

Apache Petroleum Partnership 1981-III, Ltd.

Apache Petroleum Partnership 1981-II, Ltd.

Apache Petroleum Partnership 1981-I, Ltd.

Apache Petroleum Limited Partnership 1980-III

Apache Petroleum Limited Partnership 1980-II

Apache Petroleum Limited Partnership 1980-I

Apache Petroleum Limited Partnership 1979-II

Apache Petroleum Limited Partnership 1979-I

Apache Petroleum Partnership 1978-II, Ltd.

Apache Petroleum Partnership 1978-I, Ltd.

Hutton/Apache 1982 Energy Income Fund, Inc.

Hutton/Apache Energy Income Fund II

Apache Offshore Investment Partnership

Apache Specified Properties Partnership

Atlantic Richfield Company

Non-Wholly Owned Subsidiaries and Affiliates

Agro Internacional, S. de R.L. de C.V.

Almeg Extrusion Company, Inc.

Alyeska Pipeline Service Company

Ambler Mining Company

Anamax Mining Company

Anamet, S.A. de C.V.

ARCO Chemical IBERICA, S.A.

ARCO Oil Limited

ARCO Solar Nigeria, Ltd.

Arpet Petroleum Limited

A/S Skaland Graftiverk

Atlantic Richfield Oil Limited

Badger Pipeline Company

Black Lake Pipe Line Company

Blair Athol Coal Pty., Limited

British American Metals Company, Limited

Candel International, Limited

Caribu-Chaleur Bay Mines Ltd.

Caribou-Smith Mines Ltd.

Centro-americana de Cobre, S.A.

Cobrecel, S.A. de C.V.

Colonial Pipeline Company

Compania Minera Dos Republicas S.A. de C.V.

Compania Minera Kappa, S.A.

Compania Minera Penacobre, S.A.

Compania de Petroleo Ganso Azul, Ltda.

Cook Inlet Pipe Line Company

Cupro San Luis, S.A. de C.V.

Curragh Coal Sales Co. Pty. Ltd.

Dexter de Mexico, S.A.

Dixie Pipeline Company

East Texas Salt Water Disposal Co.

85819 Canada Limited

Eisenhower Mining Company

Empresa de Comercio Exterior Mexicano, S.A. de C.V.

Greater Pacific Limited

Imperial Eastman de Mexico, S.A.

Impulsora De Cobre, S.A. de C.V.

Industrias Nacobre, S.A. de C.V.

Industrias Tecnos, S.A. de C.V.

Iricon Agency Ltd.

Kenai Pipe Line Company

Kronos, Computacion y Teleproceso, S.A. de C.V.

Kuparuk Transportation Capital Corporation

Kuparuk Transportation Company

Las Quintas Serenas Water Company

Lingobronce, S.A.

Logan Aluminum, Inc.

Manufacturera Mexicana De Partes Para Automoviles, S.A. de C.V.

Nacional de Cobre, S.A.

Nihon Oxirane Company, Ltd.

Nordisk Mineselskab A/S

P. T. Elnusa Chemlink

Park-Cummings Mining Company

Park-Premier Mining Company

Platte Pipe Line Company

Prince Consolidated Mining Company

Productos Especiales Metalicos, S.A.

Richfield U.K. Petroleum, Limited

Rodman, Inc.

Servicios Industriales Nacobre, S.A.

Sinclair (U.K.) Oil Company Limited

Sinclair Venezuelan Oil Company

Smoke House Copper Mining Company

Solvamex, S.A. de C.V.

SUMIARCO Company Limited

Swecomex, S.A.

Tecumseh Pipe Line Company

Texas-New Mexico Pipe Line Company

Tubos Flexibles, S.A.

Union de Credito Industrial Vallejo, S.A.

United Park City Mines Company

William Prym de Mexico, S.A.

Cities Service Oil and Gas Corporation

Parent: Cities Service Oil and Gas Corporation is a wholly-owned subsidiary of Cities Service Company, which is a wholly-owned subsidiary of Occidental Petroleum Investment Co., which is a wholly-owned subsidiary of Occidental Petroleum Corporation.

Affiliates:

Occidental Chemical Holding Corp.

MidCon Corp.

Natural Gas Pipeline Corp. of America

Church & Dwight Co., Inc.

Canadian Occidental Petroleum, Ltd.

United Energy Resources, Inc.

United Gas Pipeline Company

Devon Energy Corporation

General Partner:

Devon Investors Ltd., A Limited Partnership

Devon Resource Investors, A Limited Partnership

Devon 1979 Program, Ltd.

Devon-Smedvig 1973 Oil & Gas Program, Ltd.

Devon-Collins, Ltd.

Devon-Stuart Ranch, Ltd.

Subsidiaries:

Devon Corporation

Devon Production Corporation

Devon Exploration Corporation

Devon Petroleum Corporation

Devon Minerals Corporation

Devon Marketing Corporation

Devon Pipeline Company

Devon Oil & Gas Company

Exxon Corporation

Subsidiaries:

Federal Pioneer Limited

Imperial Oil Limited

InteCom, Inc.

Intrerface Mechanics, Inc.

Interprovincial Pipe Line Limited

Supertex, Inc.

TecSyn International Inc.

Exxon Capital Corporation

Exxon Credit Corporation

Exxon Overseas Finance N.V.

Exxon Finance N.V.

Exxon Pipeline Company

Exxon Shipping Company

Reliance Electric Company

Inexco Oil Company: The Louisiana Land and Exploration Company (parent)

Marathon Oil Company: U.S.X. (parent)

Meridian Oil Production, Inc.: Burlington Northern, Inc. (parent)

Mustang Product Company: Mustang Energy Corporation (parent)

Samedan Oil Company: Noble Affiliates (parent)

Sun Exploration Company and Production Company

Sun Exploration and Production Company is a wholly owned subsidiary of Sun Company, Inc.

The subsidiaries and affiliates (except wholly owned) of Sun Exploration and Production Company are:

Blackfeet Indian Writing Company, Inc.

National Railway Utilization Corporation

Lavan Petroleum Company (LAPCO)

Japan Sun Oil Company, Ltd.

Alaska Bulk Carriers, Inc.

Glacier Bay Transportation Corporation
Northbrook Corporation
Oil Insurance Limited
Convenience Store Distributing Company
Price River Water Users Association
The Wellington Canal Company
Canyon Reef Carriers, Inc.
East Texas Salt Water Disposal Company
Sun Energy Partners, L.P.
Van Salt Water Disposal Company
Hemisphere Oil Company, Inc.
Sun Hydroponics Limited
Deepsea Ventures, Inc.
Ocean Mining Associates
Liberian International American
Explorer Pipeline Company
Inland Corporation
Mid-Valley Pipeline Company
Industries for Tulsa, Inc.
West Texas Gulf Pipe Line Company
China Sun Oil, Ltd.
Sunolin Chemical Company
White River Shale Oil Corporation
The VLM Corporation
Suncor Inc.
Albersun Pipeline Ltd.
Athabasca Realty Company Limited
Baron Petroleums Inc.

Carnduff Gas Limited

GOW Fuels Inc.

Maywelle Properties Ltd.

Nottingham Gas Limited

Ouimet-Gobeille Inc.

Pacgas Limited

Redwater Water Disposal Company Limited

SMS Petroleums Ltd.

Sultran Ltd.

Sun Oil Company of Canada Limited

Sun-Canadian Pipe Line Company Limited

Suncor Supply Limited

Sunoco Home Comfort Inc.

Muskoka Oil Company Limited

Sunoco Inc.

Chemsun Inc.

Fair Wind Shipping Inc.

Solartech Limited

Sunchem Inc.

Sunchem (U.K.) Limited

Sunchem Shipping Inc.

Trillium Exploration Corporation

Lugrasa, S.A.

Petromech SDN. BHD.

Venezoil C.A.

Tenneco Oil Company: Tenneco, Inc. (parent)

No. 86-943 (2)

Supreme Court, U.S.
FILED
JAN 10 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

AMERADA HESS CORPORATION, AMOCO PRODUCTION COMPANY, APACHE CORPORATION, ATLANTIC RICHFIELD COMPANY, CITIES SERVICE OIL AND GAS CORPORATION, DEVON ENERGY CORPORATION, EXXON CORPORATION, INEXCO OIL COMPANY, KIRBY EXPLORATION COMPANY, MARATHON OIL COMPANY, MERIDIAN OIL PRODUCTION, INC., MUSTANG PRODUCTION COMPANY, SAMEDAN OIL COMPANY, SUN EXPLORATION AND PRODUCTION COMPANY, and TENNECO OIL COMPANY,

Appellants,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,

Appellee.

On Appeal from
the Supreme Court of Oklahoma

MOTION TO AFFIRM OR DISMISS

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January 8, 1987

13pp

QUESTIONS PRESENTED

Whether the Oklahoma Corporation Commission's ratable sharing of revenues order and the statutory and regulatory authority upon which it is based:

(1) conflict with the recent decision in *Transcontinental Gas Pipeline Corp. v. State Oil and Gas Board,* — U.S. —, 106 S.Ct. 709, 88 L.Ed.2d 732 (1986) ("*Transco*"), holding unconstitutional on preemption grounds a Mississippi regulation which required ratable taking of gas by pipeline purchasers among wells producing from a common source of supply.

(2) unconstitutionally deprive Appellants of due process of law, U.S. CONST. amend. XIV, § 2, by requiring the ratable sharing of revenues among those sharing interests in production.

(3) unconstitutionally impair the obligation of contracts in violation of U.S. CONST. art. I, § 10, cl. 1, in its application to proceeds of production received after the effective date of the legislation but under contracts entered into prior to such effective date.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iii

STATUTES INVOLVED iv

STATEMENT OF THE CASE 2

ARGUMENT 3

I. Appellants' Alleged Federal Regulatory "Scheme" With Which The Questioned State Statutes Conflict Does Not Exist 3

II. Appellants Have Not Been Deprived Of Due Process Of Law By Requiring The Ratable Sharing Of Revenues Among Those Sharing Interests In Production 5

III. There Is No Impairment Of Obligation Of Contracts In The State Statutes' Application To Proceeds Of Production Received After The Effective Date Of The Legislation But Under Contracts Entered Into Prior To Such Effective Date 7

CONCLUSION 7

TABLE OF AUTHORITIES

Constitution

U.S. CONST. art. I, § 10, cl. 1 i
U.S. CONST. art. VI, cl. 2 5
U.S. CONST. amend. XIV, § 2 i

Page

Statutes

15 U.S.C. §§ 3301 et seq. 4
52 Okl. Stat. §§ 541-547 (West Supp. 1986) ... 1, 2
52 Okl. Stat. § 541 (West Supp. 1986) 2
52 Okla. Stat. § 544 (West Supp. 1986) 2, 4, 5
52 Okl. Stat. § 546 (West. Supp. 1986) 4
52 Okl. Stat. § 547 (West Supp. 1986) 2

Cases

Allied Structural Steel Co. v. Spannaus, 438 U.S. 234 (1978) 7

Champlin Refining Co. v. Corporation Commission of Oklahoma, 286 U.S. 210 (1932) 1, 5, 7

Cities Service Gas Co. v. Peerless Oil & Gas Co., 340 U.S. 179, 186 (1950) 7

Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400 (1983) 7

Exxon Corp. v. Eagerton, 462 U.S. 176 (1983) 7

Hunter Company, Inc. v. McHugh, 320 U.S. 222, 227 (1943) 6

Transcontinental Gas Pipeline Corp. v. State Oil and Gas Board, — U.S. —, 106 S.Ct. 709, 88 L.Ed.2d 732 (1986) ..... i, 3, 4, 5, 7

No. 86-943

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

AMERADA HESS CORPORATION, AMOCO PRODUCTION COMPANY, APACHE CORPORATION, ATLANTIC RICHFIELD COMPANY, CITIES SERVICE OIL AND GAS CORPORATION, DEVON ENERGY CORPORATION, EXXON CORPORATION, INEXCO OIL COMPANY, KIRBY EXPLORATION COMPANY, MARATHON OIL COMPANY, MERIDIAN OIL PRODUCTION, INC., MUSTANG PRODUCTION COMPANY, SAMEDAN OIL COMPANY, SUN EXPLORATION AND PRODUCTION COMPANY, and TENNECO OIL COMPANY,

Appellants,

v.

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA,

Appellee.

MOTION TO AFFIRM OR DISMISS

Appellee moves the Court to affirm the judgment of the Supreme Court of Oklahoma or, in the alternative, to dismiss the appeal herein on the ground that the jurisdictional questions presented by Appellants do not present a substantial federal question. Further, the State's power to regulate production of gas and to limit the rights of producers of gas in their exertion of ownership was definitively decided by the Court in *Champlin Refining Co. v. Corporation Commission of Oklahoma,* 286 U.S. 210 (1932).

STATUTES INVOLVED

52 Okl. Stat. §§ 541-547 (West Supp. 1986) appear in Appellants' Jurisdictional Statement at Appendix E.

STATEMENT OF THE CASE

On May 3, 1983, Enrolled House Bill No. 1221 was signed into law, now codified as 52 Okl. Stat. §§ 541-547 (West Supp. 1986) ("the Act"). The Act sets forth a comprehensive scheme for the distribution of revenues among owners in a well. The purpose as stated in Section 541 is the protection of "the rights and correlative rights of all interest owners of natural gas wells and wells producing casinghead gas and to afford all such owners an equal opportunity to extract their fair share of gas and to sell and be paid in proportion to their interest therein." This remedy was fashioned by the legislature to provide for an equitable distribution of revenues from a well for that owner who participates in the drilling of a well, has advanced costs for such drilling, yet is unable to contract with a purchaser for his share of production. Such owner, in the past, was forced to sit idly by while the well, though producing, produced only a contracted owner's gas. Under the Act, however, each contracted owner must share revenues received from production with non-contracted owners who have not otherwise entered into gas balancing agreements or other such agreements.

This significant change is made possible through the language found in Section 544. Section 544 espouses a molecular theory of mineral ownership in production. "The amount of gas produced daily, irrespective of the owner producing, belongs to, is owned by, and shall inure to the benefit of each owner in the well in proportion to each owner's interest in the well."

Pursuant to Section 547, the Oklahoma Corporation Commission, by Order No. 250466 entered on December 21, 1983, promulgated rules to implement the Act.

The Appellants appealed to the Oklahoma Supreme Court to overturn the Commission rules and underlying statutes. *Dennis E. Seal et al. v. Corporation Commission of the State of Oklahoma,* No. 61636, consolidated with *Amerada Hess Corporation et al. v. Corporation Commission of the State of Oklahoma,* No. 61652. On June 17, 1986, the Oklahoma Supreme Court issued the opinion upholding the statutes against all state and federal constitutional challenges and finding such legislation a reasonable exercise of the state's police power. The Oklahoma Corporation Commission rules were also held to be valid except as to certain timing and liability provisions. Appellants thereafter timely filed petitions for rehearing. Response to such petitions was not ordered by the Court and thereafter the petitions were denied without opinion on September 10, 1986. From such action this appeal was brought.

ARGUMENTS IN SUPPORT OF MOTION TO AFFIRM OR DISMISS

I. Appellants' Alleged Federal Regulatory "Scheme" With Which The Questioned State Statutes Conflict Does Not Exist

Appellants' argument presented under their first jurisdictional question regarding the impact of the Court's recent decision in *Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board,* — U.S. —, 106 S.Ct. 709, 88 L.Ed.2d 732 (1986), ("*Transco*") should be dismissed by the Court. The question was contained in Appellants' Petition for Rehearing before the Oklahoma Supreme Court. However, the Oklahoma Court did not request the Appellee Commission to respond to the Petition and, therefore, the question was not fully briefed and argued before the state court. The Oklahoma Supreme Court disposed of

Appellants' Petition summarily by minute order denying rehearing.

Further, in framing its argument under its first jurisdictional question, Appellants artfully construct a federal regulatory "scheme," consisting of the Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301 et seq. which concerns price, supply and demand of deregulated natural gas, i.e. purchasing practices, and then proceed to demonstrate a conflict between such federal regulatory scheme and the Oklahoma statutes which are the subject of this appeal. However, the Oklahoma statutes concern sharing of revenues received on production by contracted owners with non-contracted owners in a single wellbore based on a molecular theory of mineral ownership. Appellants' have made a quantum leap in logic to attempt to bring the state statutes within the prohibitions enunciated by the Court in *Transco, supra.*

Indeed, the state statutes do not conflict in any manner with the prohibitions enunciated in *Transco, supra.* The state statutes do not require producers to share their markets. The statutes do, however, require sharing of revenues received from production under certain conditions. There is nothing inequitable in that requirement since, under 52 Okl. Stat. § 544, each molecule of gas produced, "irrespective of the owner producing, belongs to, is owned by, and shall inure to the benefit of each owner in the well in proportion to each owner's interest in the well."

Nor do the state statutes have the effect of raising prices. Under Section 546, "[n]othing in this act shall be construed as setting the price, terms or conditions under which a purchaser takes the production of a well or setting any restrictions, limitations, floor or ceiling on the price to be paid for such production . . . " There is no interference with

Congressional intent that the price of deregulated gas be determined by market forces.

Nor is there any requirement, as there was in the Mississippi regulation overturned in *Transco, supra,* that a purchaser connect a well that such purchaser is not already obligated to connect.

The state statutes do not conflict in any manner with the prohibitions set forth in *Transco, supra,* and, thus, do not violate the Supremacy Clause of the United States Constitution, art. VI, cl. 2. Hence, there is no substantial federal question to support this appeal.

II. Appellants Have Not Been Deprived Of Due Process Of Law By Requiring The Ratable Sharing Of Revenues Among Those Sharing Interests In Production

The thrust of Appellants' argument presented under their second jurisdictional question is that the Oklahoma Supreme Court has redefined "correlative rights" as referring to the relationship among owners in a single wellbore. Appellants fail to address why this redefinition is prohibited in light of the significant change made by the Legislature in the molecular theory of mineral ownership. 52 Okla. Stat. § 544 (West Supp. 1986).

The breadth of the state's power to regulate the production of oil and gas, and to thus limit the rights of oil and gas producers in their exertion of ownership, was recognized in the case of *Champlin Refining Co. v. Corporation Commission of Oklahoma,* 286 U.S. 210 (1932), where the Court stated, at page 233:

> In Oklahoma, as generally elsewhere, land owners do not have absolute title to the gas and oil that may permeate below the surface.

> These minerals, differing from solids in place such as coal and iron, are fugacious and of uncertain movement within the limits of the pool. Every person has the right to drill wells on his own land and take from the pools below all the gas and oil that he may be able to reduce to possession, including that coming from land belonging to others; but the right to take and thus to acquire ownership is subject to the reasonable exertion of the power of the State to prevent unnecessary loss, destruction or waste. And that power extends to the taker's . . . unreasonable and wasteful depletion of a common supply of gas and oil to the injury of others entitled to resort to and take from the same pool. *Ohio Oil Co. v. Indiana,* 177 U.S. 190 [citations omitted.]

This power was given a somewhat broader reading by the Court in *Hunter Company, Inc. v. McHugh,* 320 U.S. 222, 227 (1943):

> We have held that a state has constitutional power to regulate production of oil and gas so as to prevent waste and to secure equitable apportionment among landholders of the migratory gas and oil underlying their land, fairly distributing among them the costs of production and of the apportionment. [citations omitted.]

Appellants argue that the State is limited to affecting rights only as they relate to owners of interests between wells. This argument fails logically in that there simply exists no reason to differentiate between those interests of

co-owners in a common source of supply as they relate to separate wells and those interests of co-owners in a common source of supply being produced from a single well. In both instances the potential exists for one party to act to the detriment of the interests of others. It is beyond doubt that the state has the right to modify property concepts to protect the various interests of owners in a common source of supply. This is the common thread in the previously cited cases. That right logically extends to the protection of the rights of those owners' interests as they exist in a single well.

The state statutes questioned on appeal protect the legitimate interests of the citizens of the state. It is a proper exercise of the police power and "substantially related to a legitimate end sought to be attained." *Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 340 U.S. 179, 186 (1950).

III. There Is No Impairment Of Obligation Of Contracts In The State Statutes' Application To Proceeds Of Production Received After The Effective Date Of The Legislation But Under Contracts Entered Into Prior To Such Effective Date

Appellants' argument under their third jurisdictional question is largely a restatement of their first question. Appellants recognize that *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978), is controlling and that the *Allied* test has not changed. *Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400 (1983); *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983). Yet Appellants argue that *Transco, supra*, has somehow changed the test. For the reasons stated in Argument I herein such argument falls.

CONCLUSION

For the reasons that there is no substantial federal

question and the State's power to regulate production of gas and to limit the rights of producers of gas in their exertion of ownership was definitively decided by the Court in *Champlin Refining Co. v. Corporation Commission of Oklahoma, supra,* this Court should affirm the judgment of the Supreme Court of Oklahoma or, in the alternative, dismiss the appeal herein.

Respectively submitted,

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